TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 283.

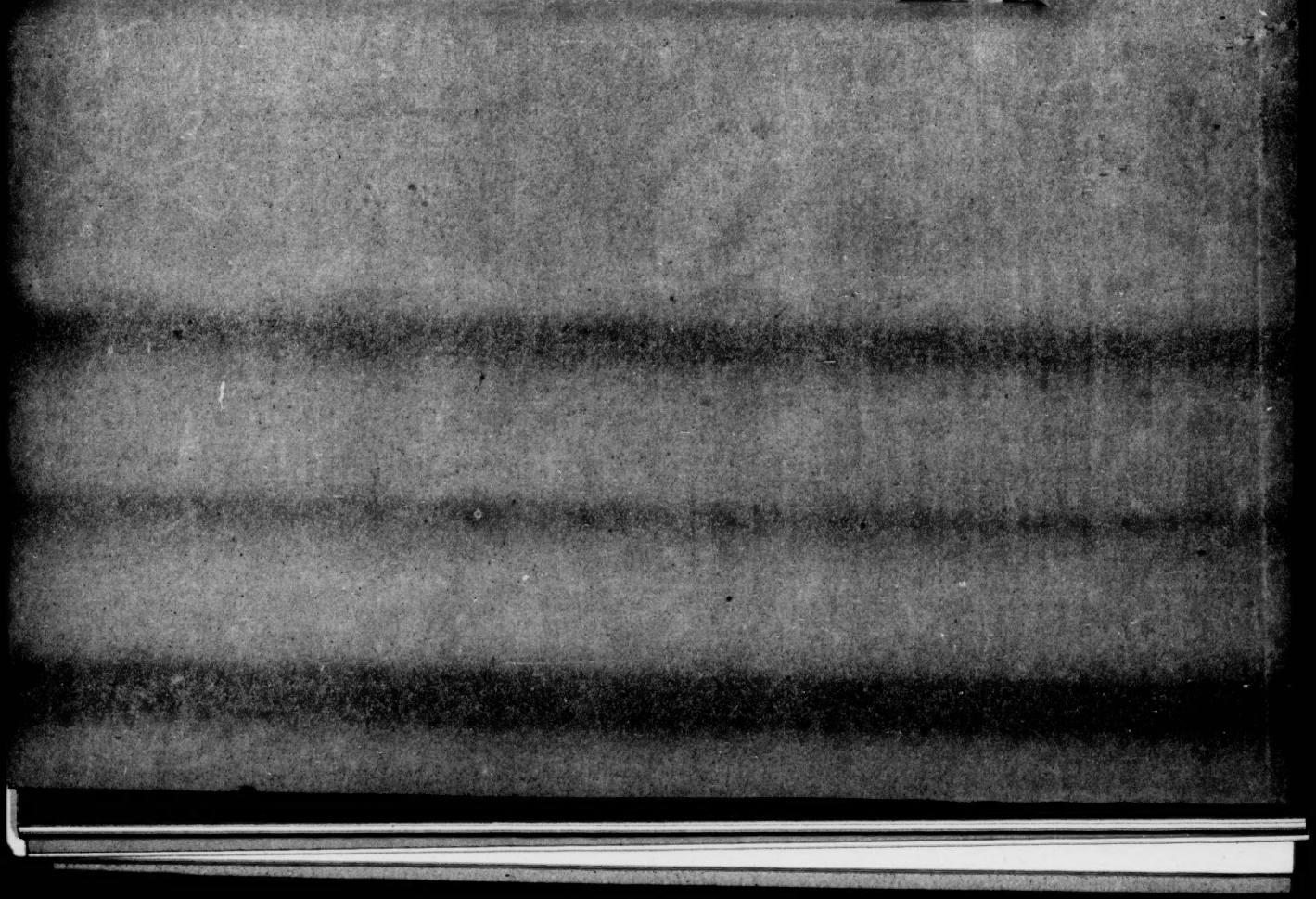
THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

CHARLES M. CONRAD, CLAIMANT OF CERTAIN LOTS OF GROUND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1872.



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INDEX.

	Original.	Print.
Motion and order to issue writ of error	1	1
Petition of C. M. Conrad for writ of error	2	1
Order allowing writ of error	4	2
Writ of error, issued January 19, 1870	4	2
Citation in error, issued January 19, 1870	6	2
Marshal's return	7	3
Affidavit of deputy United States marshal	8	3
Alias citation in error, issued January 26, 1870	8	3
Marshal's return	9	3
Affidavit of deputy United States marshal	9	4
Transcript from United States district court	10	4
Libel of information	10	4
Order of publication	21	7
Warrant	27	9
Description of property	29	10
Marshal's return on warrant	32	11
Marshal's monition	33	11
Default	38	12
Testimony for libelants	38	12
of John A. Newell	39	12
of J. E. Wallace	40	12
Order taxing district attorney's fee	41	13
Intervention of the State of Louisiana	41	13
Order taxing marshal's fees	47	15
Testimony for libelants	47	15
Notice to commissioner	48	15
Marshal's return of service	49	15
Testimony for libelants	49	16

	Original.	Print.
Testimony of Rob't Dalton	49	16
Testimony of Harmone Doane	51	16
Notice to commissioner	52	17
Marshal's return	52	17
Testimony for libelants	53	17
of Alexander White	53	17
of Joseph Howell	54	17
Order: Cause fixed for trial	54	18
Notice of trial	55	18
Marshal's service	55	18
Note of evidence	56	18
Hearing and decree of condemnation	56	19
Venditioni exponas	58	19
Marshal's return	60	20
Certificate of mortgages	62	20
Description of property	64	21
Taxation of costs	68	22
Rule to correct marshal's return	69	23
Decree of distribution	69	23
Marshal's service of rule	72	24
Exception to rule	73	24
Exception of late marshal	78	26
Order: Rule continued	79	26
Order: Rule continued	80	26
Hearing and continuance	81	27
Order: Rule re-assigned	81	27
Order: Continuance of rule	82	27
Submission of rule	82	27
Order postponing decision	82	27
Reasons for judgment	83	27
Bond for writ of error	86	28
Clerk's certificate	88	29
PROCEEDINGS IN UNITED STATES CIRCUIT COURT.		
Assignment of errors	89	29
Rule to dismiss writ of error	92	31
Marshal's return on rule	93	31
Rule to dismiss writ of error	94	31
Marshal's return on rule	94	31
Order: Rule of 7th May, 1870, dismissed	95	32
Withdrawal of rule of May 13, 1870	95	32
Joinder in error	96	32
Hearing and continuance of cause	97	33
Order to detach certain proceedings from the transcript of the United States district court	97	33
Hearing and continuance	98	33
Hearing and submission of cause	99	33
Order: Decision withheld	99	34
Decree	99	34
Motion and order for writ of error	101	34
Petition for writ of error	101	35
Order allowing writ of error	102	35
Bond for writ of error taken by C. M. Conrad	103	35
Assignment of error	105	36
Clerk's certificate	107	36
Writ of error	108	37
Citation	109	37

1 UNITED STATES OF AMERICA:

United States circuit court, fifth circuit and district of Louisiana.

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND, plaintiff in error
vs.
THE UNITED STATES, DEFENDANTS IN ERROR. } 6039.

Motion and order to issue writ of error.—Extract from minutes, November term, 1869.

NEW ORLEANS, *Thursday, December 23d,* 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

On motion of C. M. Conrad, def't in p'a p'a, and Billings and Hughes, of counsel for def't, in this case, and on suggesting that there is error, to the great damage of def't, in the decree rendered in the above-entitled suit, being No. 7653, of the docket of the district court of the
2 U. S. for the east. dist. of L'a, on the 3rd day of Feb'y, 1865, and signed on the 8th day of Feb'y, 1865, condemning the said property seized herein as forfeited to the United States, and ordering the same to be sold by the marshal, it is ordered that a writ of error do issue in said cause, directed to the district court of the United States for the dis't of L'a, returnable as the law directs.

It is further ordered that said C. M. Conrad do execute his bond, with Duncan F. Kenner as security, in the sum of $500, for costs, as the law directs.

Petition and order for writ of error.—Filed January 18th, 1870.

To the honorable the circuit court of the United States for the fifth circuit sitting in and for the district of Louisiana.

Humbly shows the petition of Charles M. Conrad, of the city of New Orleans, that your petitioner is informed and believes that there
3 is error to his prejudice in a certain decree rendered by the district court of the United States for the said district of Louisiana, on the 3rd day of February, 1865, (signed on the 8th day of February, 1865,) in the suit or proceedings entitled United States versus Ten lots of ground, the property of Charles M. Conrad, numbered 7653 of the docket of said court, whereby certain property therein described, whereof a portion belonged to your petitioner and the remainder to petitioner's vendors, was condemned as forfeited to the United States and ordered to be sold by the marshal.

Wherefore your petitioner pray' that your honor will allow a writ of error directed to the judge of said district court of Louisiana, commanding him to send the record and proceedings in said case, with all things concerning the same, to the circuit court of the United States for the fifth circuit and district of Louisiana.

And your petitioner will ever pray, &c.

(Signed) C. M. CONRAD, *In pro. p'ay.*
4 (Signed) BILLINGS & HUGHES,
Att'y's &c.

Order.

A writ of error is allowed as prayed for, returnable on the 4th Monday of April, next, (1870.)
Jan'y 18th, '70.
(Signed) E. H. DURELL, *Judge.*

Writ of error issued January 19th, 1870. Received and filed in the U. S. district court the same day.

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND, pl'tiff in error,
vs.
THE UNITED STATES, *Plaintiff* IN ERROR. } No. 6039.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States holding sessions for the district of Louisiana, greeting:

Because in the record and *and* proceedings, as also in the rendition of the judgment of a plea which is in the said district court
5 before you, between the United States of America and Ten lots of ground, the property of C. M. Conrad, being 7653 of the docket of the said United States district court, a manifest error hath happened to the great damage of the said C. M. Conrad, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you have the same at New Orleans on the fourth Monday of April next, in the said circuit court to be then and there held that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to
6 be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 19th of January, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (Signed) D. URBAN,
Clerk of the U. S. Cir. Court, Dist. of Louisiana.

Citation in error.—Issued by the U. S. dist. court, Jan'y 19th, 1870.

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans on the 4th Monday of April next, 1870, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of Lou-
7 isiana, wherein Charles M. Conrad is plaintiff and you, the said United States, are defendant in error, to show cause if any there be, why the judgment or decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, one of the judges of said circuit court for the fifth circuit and the district of Louisiana.
Jan'y 19th, 1870.
(Signed) E. H. DURELL,
Judge of the Dist. Court of the U. S. for Dist. of L'a.

Marshal's return.

Received Jan'y 21st, 1870, by the U. S. marshal, and on the same day, month, and year, served a copy of the within citation in error on the United States of America, through P. H. Morgan, United States district attorney for the district of Louisiana, by leaving the same at his office, in the hands of J. W. Gurley, his clerk, a person over 14 years of age, known to me; said P. H. Morgan being absent at the time of said service.
New Orleans, January 21st, 1870.
8 (Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

F. Woolfley, being sworn, says he is a deputy of the U. S. marshal, and that on the 21st January, 1870, he served a copy of the within citation on the defendant in error, in the manner set out in his official return hereto attached.
(Signed) F. A. WOOLFLEY.

Sworn to and subscribed before me this 22d January, 1870.
(Signed) K. LOEW, *U. S. Com'r.*

Alias citation.—Issued January 26th, 1872.

To the United States of America, greeting:
You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans on the 4th Monday of April next, (1870,) pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of
9 Louisiana, wherein Charles M. Conrad is plaintiff and you, the said United States, are defendant in error, to show cause, if any there be, why the judgment or decree in the said writ of error mentioned should not be done to the parties in that behalf.
Witness the honorable E. H. Durell, one of the judges of said circuit court for the fifth circuit and the district of Louisiana.
January 26th, 1872.
(Signed) E. H. DURELL,
Judge of the District Court of the U. S. for the District of Louisiana.

Marshal's return.

Received January 27th, 1870, by the U. S. marshal, and on the 29th day of the same month and year served a copy of the within citation in error *in* the United States, through P. H. Morgan, its attorney for the district of Louisiana, by delivering the same to him, said att'y, in person.
New Orleans, January 29th, 1870.
(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

F. A. Woolfley, being sworn, says he is a d'y marshal, and that he served copy of the within citation on the defendant in error, as set forth in his official return on file.

Jan'y 29th, 1870.

(Signed) F. A. WOOLFLEY.

Sworn to and subscribed before me on the day and year above written.

(Signed) K. LOEW, *U. S. C.*

Transcript from U. S. district court.—Filed March 24th, 1870.

United States district court, district of Louisiana, (formerly eastern district.)

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

Libel of information.—Filed August 7th, 1863.

To the honorable Edward H. Durell, judge of the district court
11 of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits, and effects," hereinafter described, and against all persons intervening for their interest therein in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the 17th day of July, in the year of our Lord
12 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels and for other purposes," heretofore, that is to say, on the 29th day of July, in the year 1863, seized as forfeited to the United States, at New Orleans, within said district and within the jurisdiction of this court, two lots of ground situate in suburb St. Mary, between St. Joseph and De Lord streets, designated by the Nos. 7 and 8, on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. C. Christy; said lots adjoin each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep between parallel lines; No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measure, together with the buildings and improvements thereon.

A certain lot of ground, with the four story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier st., Charles, and Poydras streets, designated by the No.
13 47, on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet between parallel lines.

A certain lot of ground, situate on the batture in front of the first

district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11, on a plan, known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet & 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure, together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine,
14 Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor, & others, 35 feet 7 inches in width on the rear, adjoining the fire-engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1862.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary.

Said lot measures 23 feet 8½ inches front, on Carondelet street, by
15 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situate in the faubourg Levandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the numbers 1, 2, 3, and 4 on a plan by Knell and Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lot No. 1 forming the corner of First and Prytania; lot No. 4, measures 28 feet 1 inch and 2 lines front on Prytania street by
16 120 feet in depth, between parallel lines, *lot* all American measure.

2d. That the person who owns the said property, Charles M. Conrad, of New Orleans, L'a, is, and was on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

3rd. That certain States forming a part of the territory and constituting a part of the United States, in his proclamation, duly issued and bearing date the first day of July, A. D. 1862, are now engaged, and were at the time said proclamation was issued engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

4th. That by the act of Congress of the United States approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of *property of* rebels, and for other purposes," provision was made for the seizure and confiscation of the property

17 of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

5th. That the said Charles M. Conrad, the person whose property is herein seized, subsequently to the said 17th day of July, in the year of our Lord 1862, did act as an officer of the army or navy of the rebels, in arms against *against* the Government of the United States, or as a member of congress, or as a judge of a court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America; or that while owning property in a loyal State or territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

6th. That the said Charles M. Conrad, the person who owns the said property, subsequently to the said 17th day of July, in the year

18 of our Lord 1862, did act as governor of a State, or as a member of a convention or legislature, or as judge of a court of one of the so-called Confederate States of America, to wit, the State of Louisiana, or did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States; or did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, state, or municipal in its name and character, which said office or agency he accepted, after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of, the so-called Confederate States.

7th. That the said Charles M. Conrad, the person who owns the said property, subsequently to the said 17th day of July, in the year of our Lord 1862, within a State or Territory of the United States, was

19 engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States, on the 25th day of July, in the year 1862, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States.

8th. That the said Charles M. Conrad, the person who owns the said property, subsequently to the 17th day of July, in the year of our Lord, 1862, within a state or territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation duly given and made on the 25th day of July, in the year 1862, by the President of the United States, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States.

9th. That, by reason of the premises, the property herein de-

20 scribed, and all the right, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, or the owner and owners thereof, and against all persons interested, or claiming an interest therein, warning them, at some early day to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may ap-

pertain, and as this court is competent to give in the premises, and that, after due proceedings had, the said property may be condemned and forfeited to the United States of America, and he prays for general relief.

21 (Signed) RUFUS WAPLES,
U. S. District Attorney, for the Eastern District of Louisiana.

Order of publication.—Issued August 8th, 1863.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

Whereas two lots of ground, situate in suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. Christy, said lots adjoin each other and measure each: No. 7 measures 24 feet front on Camp st. by 116 feet 10 inches and 5 lines deep, between parallel lines lot No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep, between parallel lines, (English measure,) together with the buildings and improvements thereon;

22 A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47, on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet, between parallel lines;

A certain lot of ground, situate on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11, on a plan known as the plan of I. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas: Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said

23 Fulton st., by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, (American measure,) together with all the buildings and improvements thereon;

The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia st. by 151 feet deep on the side towards Magazine st., 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor and others, 35 feet 7 inches in width in the rear, adjoining the fire-engine co. of No. 6;

The whole, in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836;

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and convenient stable erected thereon, situate on the western side of Carondo-

24 let street, between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary: Said lot measures 23 feet 8½ inches front on Carondelet st. by 23 feet 9 inches and 2 lines, more or less, in the rear, by

a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 4;

The place between the stable and yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements on said plan;

Four certain lots of ground, situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades st., designated by the Nos. 1, 2, 3, and 4 on a plan by Knell and Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary;

25 Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania st., by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania streets; lot No. 4 measures 28 feet 1 inch 2 lines front on Prytania st., by 120 feet deep, between parallel lines, American measure, together with all the improvements, buildings, rights, privileges, appurtenances, and other heriditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Charles M. Conrad therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" And whereas the United States

26 attorney for the eastern district of Louisiana did on the 7th day of August, A. D. 1863, file a libel of information in this court praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is therefore, on this 8th day of August, in the year of our Lord 1863, ordered that notice be given to the owner or owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 31st day of August, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of the said Charles M. Conrad, should not be condemned and sold according to law; and that

27 notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 31st day of August, A. D. 1863, the first publication to be on or before 11th instant.

New Orleans, August 8th, 1863.

(Signed) E. H. DURELL, *Judge.*

Warrant.—Issued August 8th, 1863.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the property, a full description whereof is hereto annexed as a part of this writ, together with all the improvements, buildings, privileges, and other hereditaments thereunto belonging, as well as all the right, title, and interest of Charles M. Conrad therein, now libelled by the United States for the causes set forth in the libel now pending

28 in the district court of the United States for the eastern district

of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property, &c., should not be condemned and sold agre'ably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88th year of the Independence of the United States.

[SEAL.] (Signed) ALFRED SHAW, *Clerk.*
By K. LOEW, *D'y Clerk.*

29 *Description of property annexed to warrant.*

Description of real estate libelled in suit No. 7653.

Two lots of ground situated in suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 & 8 on a plan by E. F. Zimple, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other and measure each: No. 7 measures 24 feet front on Camp street by 116 feet 10 inches 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas;
30 which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situated on the batture in front of the first district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11, on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches 3 lines on said Fulton street, by a depth of 119 feet 3 inches & 2 lines on the line which divides it from lot No. 12, American measure; together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situated in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9
31 inches in depth on the other side, adjoining the property of Peters, Millor, and others, 35 feet 7 inches in width on the rear, adjoining the fire engine co. of No. 6. The whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular, the lot of ground, together with the story brick dwelling-house, the three-story brick buildings, convenient stable erected thereon, situated on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St. Mary, designated

as lot No. 3, on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as Plan No. 1, in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front, on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 4.

32 The place between the stable and yard is reserved, by the said act, as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situated in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Knell and Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary; lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lot No. 1 forming the corner of First and Prytania streets; lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep, between parallel lines, American measure.

True copy.
Aug. 8th, 1863.
(Signed) K. LOEW, *D'y Clerk.*

Marshal's return on warrant.—Filed August 29th, 1863.

33 Received August 8th, 1863, and in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of the libel of information, this warrant, and order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in the city of New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863. Returnable 31st August, 1863.
(Signed) JA'S GRAHAM, *U. S. Marshal.*

Marshal's monition attached to warrant.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

In the United States district court, eastern district of Louisiana.

In obedience to a warrant issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession two lots of ground, situate in suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 and 8, on a plan by C. F.

24 Zimpel, 8th April, 1835, deposited in the office of W'm Christy; said lots adjoin each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines, English measure.

A certain lot of ground, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47, on a plan by F. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground, situate on the batture in front of the first

district, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11, on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas; said lot measure', according to said plan, 24 feet 2 inches
35 and 7 lines front, on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, American measure.

The one undivided half of a certain lot of ground, situate in the first district of said city, in square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas, measuring 65 feet front on Julia, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor, and others; 35 feet 7 inches in width on the rear, adjoining the fire engine co. No. 6. The whole in conformity to a plan drawn by Tho's Pilie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground situate on the western side of Carondelet street between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1, in the book of
36 plans by T. Mossey, notary. Said lot measures 23 feet 8½ inches front on Carondelet, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary-line of lot No. 2; and 149 feet 10½ inches, more or less, on the boundary-line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground situate in the faubourg Livandais, in the parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Knell and Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines, lot No. 1 forming the corner of First and Prytania. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street,
37 by 120 feet deep between parallel lines, American measure: Together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Charles M. Conrad therein, now libeled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the said district court. And I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said above-described property should not be condemned and forfeited to the United States, agreeable to the prayer of the libellants.

38 United States marshal's office, New Orleans, 11th day of August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

Aug. 11, 15, 19, 22, 25, 29.

Default.—Extract from the minutes of September 1st, 1863.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

The delay allowed by law having expired herein, and no claim or defence having been filed, after due monition and proclamation, on motion of the dist. att'y, it is ordered, that all persons interested in the property seized herein be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.

TESTIMONY.

Testimony for libellants.—Filed May 5th, 1864.

U. S. district court, eastern district of Louisiana.

UNITED STATES
vs.
10 LOTS OF GROUND, THE PROPERTY of C. M. Conrad. } No. 7653.

39

APRIL 19TH, 1864—5 *o'clock p. m.*

Before Charles Claiborne, U. S. com'r.

JOHN A. NEWELL, a witness on the part of the libellants, duly sworn, deposes:

I reside in Rapides Parish. I arrived in the city on the 7th inst. I was in Rapides Parish at the time of the last rebel congressional election. Charles M. Conrad was a candidate. I saw tickets with his name on them. I knew of no other candidate for congress. I understood Mr. Conrad to be elected. I saw it afterwards in print in the Western Democrat, a paper published at *a* Alexandria. It was generally understood there that C. M. Conrad had received the majority of the votes cast. I have the same sort of knowledge of the election of C. M. Conrad to the rebel congress that I have that Abraham Lincoln was elected to the presidency in the last presidential election. I have seen the name of C. M. Conrad mentioned in the reports of the pro-
40 ceedings of the rebel congress at Richmond.

(Signed) JOHN A. NEWELL.

Sworn to and subscribed before me this 19th April, 1864.
(Signed) CHARLES CLAIBORNE,
U. S. Comm'er.

J. E. WALLACE, a witness on the part of libellants, duly sworn:

I am a member of the bar of Louisiana; formerly resided in De Soto Parish; now a resident of the city of New Orleans. I know that Charles M. Conrad was elected to the congress of the Confederate States. I travelled with him between Atlanta, Georgia, and Jackson, Mississippi, at which time he stated to me that he was on his return from the rebel congress. This was in April, 1862. He introduced me to several other members of congress in the cars with us. I know, by common report,

that he was re-elected to the rebel congress. I know, of my own knowledge, that an election took place for members to the rebel congress, and, to the best of my knowledge, he was re-elected. This was about
41 a year ago; some time in 1863. I was then at Avery's Island, in the State of Louisiana.

(Signed) J. E. WALLACE.

Sworn to and subscribed before me this 19th April, 1864.

(Signed) CHA'S CLAIBORNE,
U. S. Comm'r.

Order taxing district attorney's fee.—Extract from the minutes of 28 *June,* 1864.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

Ordered that $15.20 be taxed as the fees due Rufus Waples, U. S. dist. attorney, for services rendered in this case up to date, June 27th, 1864.

Intervention of the State of Louisiana.—Filed August 31*st,* 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
CHA'S M. CONRAD. } No. 7653.

42 To the honorable E. H. Durell, judge of the district court of the United States in and for the eastern district of Louisiana:

The intervention of B. L. Lynch, attorney-general of the State of Louisiana, and his said capacity representing said State, alleges and articulately propounds as follows:

That the defendant herein is indebted unto the said State of Louisiana, herein intervenor, in the sum of $608.75, for this, to wit:

That in the year 1861 an assessment was duly and legally made by the State assessor of the State of Louisiana of all the property within the limits of the parish of Orleans; that the said assessment-roll was duly adopted after the delay required by law, and shows that the State tax of the said defendant amount' to the sum of $304.80 for said year; that in the year 1862 an assessment was made, in manner and form as required by law, by the said State assessor, of all the property contained within the limits of said parish, and that the defendant herein
43 stands assessed upon said assessment-roll of the year 1862 for the sum of $303.95, for property owned by him in the city of New Orleans during the latter year, which two sums herein above referred to amount to $608.75, all of which will more fully and at large appear from a certified copy of each of said assessment-rolls and other evidence to be produced upon the trial of this cause.

That under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this case must conform as nearly as may be to proceedings in admiralty or revenue cases, and that according to admiralty proceedings and jurisdiction ordinary or general creditors may

claim the property brought into registry and to be disposed of or distributed by the court.

That under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession by the marshal of the United States was at the time of such seizure and taking into possession pledged to the State of Louisiana in payment of her claims as one of his creditors.

That under and by virtue of the laws of the State of Louisiana in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien or privilege is of a higher rank than any mortgage or other incumbrance whatever; that the said property at the time of such seizure, and previous thereto, was held and owned by the said Cha's M. Conrad, subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting as aforesaid to $608.75.

That at the time of filing libel or information, and at the time of the seizure aforesaid by the marshal, intervenor was entitled, by the laws of Louisiana, to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore, intervenor prays that by an order of this honorable court she may be authorized to appear and prosecute this intervention, that due process of law, according to the course and practice of the court in like cases may issue, and that Rufus Waples, esq., district attorney of the United States for said district, may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to declare, pronounce, and decree that the claim and demand of intervenor against the said Cha's M. Conrad, amounting to the sum of $608.75, as herein above set forth, be allowed; that judgment for said claim be rendered in favor of intervenor and against the said Cha's M. Conrad; that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein be recognized and enforced for the payment of intervenor's aforesaid claim, with his costs in this behalf expended.

That in the event of this court proceeding to render judgment of condemnation against said lot, then that your honor, notwithstanding such condemnation, and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom, to the United States, or to any inferior or inferiors, person or persons whatsoever, will first provide for the payment by such lot, or its proceeds, if the same is sold at suit of government, of intervenor's claim and demand aforesaid, and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH.

(Signed) B. L. LYNCH,
Attorney-General, for Intervenor.

Sworn to and subscribed before me this 31st day of August, in the year of our Lord 1864.

(Signed) K. LOEW, *D'y Clerk.*

Memorandum.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

It appears from the minutes of September 6th, 1864, that the marshal's fees in the above case were taxed, by order of court, at $92.24.

Testimony for libellants.—Filed December 26th, 1864.

U. S. dist. court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad.

MAY 18, 1864, 5 *o'clock p. m.*

Before Ch's Claiborne, U. S. commissioner.

R. R. BARROW, for libellants, sworn, deposes:

I reside in Louisiana, in the parish of Terre Bonne. I have
48 known Mr. C. M. Conrad for many years. I understood he was a candidate for the confederate congress, and that he was elected. I know it as I know that Lincoln was elected President of the United States. I have never heard of his resigning. The election for the confederate congress took place after secession. From general report I know that he is a member of the confederate congress at this time.

(Signed) R. R. BARROW.

Sworn to and subscribed before me this 18th of May, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Com'r.

Notice to commissioner.—Issued January 18th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

To Charles Claiborne, U. S. com'r:

You are hereby notified that testimony will be taken before you
49 in the above-entitled cause on Thursday, the 19th day of January, 1865, at the clerk's office, at 12 o'clock m., on behalf of libellant.

New Orleans, January 18th, 1865.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.

Received, January 18th, 1865, and, on the same day, month, and year, served a copy of the within notice on Ch's Claiborne, U. S. commissioner, in person.

New Orleans, January 19th, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Testimony for libellant.—Filed January 19th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Testimony taken in presence of district attorney.

N. O., JANUARY 19TH, 1865, 12 *m.*

ROBERT DALTON, being duly sworn for libellant, deposes and says:

50 I know Mr. Cha's M. Conrad. I last saw him two years ago next March, in Richmond, Virginia. I think he was then a member of the rebel congress. He was formerly a resident of this State. I saw him on the streets of Richmond, at the corner of 7th and Main, at a hotel there. I may have seen him since that time, but don't remember. I was introduced to him as a member of the confederate congress by Mr. Burke or Col. Walton. He did not deny his being a member of the rebel congress. In this contest Mr. Conrad is on the rebel side. I suppose Mr. Conrad is doing all he can for his cause. He is, by common report, a very prominent man in the Confederate States gov't. He is looked upon in that light by everybody. I solicited his influence for me as a member of congress. I had business with him as such.

(Signed) ROBERT DALTON.

Sworn to and subscribed before me this 19th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Comm'r.

51 HARMON DOANE, being duly sworn for libellant, deposes and says:

I am slightly acquainted with C. M. Conrad. I think I knew him here slightly some years ago. He has been a politician for a long time; that is his character. I think he was, at one time, a member of Congress of the U. S., and also Secretary of War of the U. S. He was reported to be a member of the so-called Confederate States congress. Public report said so. This was one year ago. He is a man of considerable ability by reputation. I saw him once in Richmond; met him casually. I was in neither house of congress while they were in session. I should presume, by common report, that he was taking a prominent part in this contest as a member of the rebel congress. From his character I should judge he would be a prominent man in anything he did undertake. I had no conversation with him; nothing more than a passing salutation of the day. It was about one year ago. I
52 saw him in Richmond. I had no business whatever with him.

(Signed) HARMON DOANE.

Sworn to and subscribed before me this 19th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

Notice to commissioner.—Issued January 20th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

To Ch's Claiborne, U. S. com'r:

You are hereby notified that testimony will be taken before you in the above-entitled cause on Monday, the 23d day of January, 1865, at the clerk's office, at 12 o'clock m., on behalf of libellant.

New Orleans, Jan'y 20th, 1865.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.

53 Received, January 20th, 1865, and, the same day, month, and year, served a copy of the within notice on C. Claiborne, esq., U. S. com'r, personally.

January 21st, 1865.

(Signed) G. HOLLANDER,
Dep. U. S. Marshal.

Testimony for libellant.—Filed January 25th, 1865.

UNITED STATES, *District of Louisiana:*

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Testimony taken in presence of district attorney.

N. O., JANUARY 25TH, 1865.

ALEXANDER WHITE, being duly sworn, deposes and says:

I know Mr. C. M. Conrad. Knew him here, & also knew him in the confederacy. He was a member of the confederate congress. He has been in the confederate congress since July 17th, 1862, and I believe he is still there. He was formerly in the Congress of the United States.

(Signed) ALEX. WHITE.

54 Sworn to and subscribed before me this 25th day of January, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

JOSEPH HOWELL, being duly sworn, deposes and says:

I have heard Mr. C. M. Conrad was and is a member of the confederate congress, and believe him to be. I saw him when I was quite young. Don't recollect ever having seen him since. I think Mr. Conrad was also a member of the Congress of the United States.

(Signed) J. D. HOWELL.

Sworn to and subscribed before me this 25th Jan'y, 1865.
(Signed) CHA'S CLAIBORNE,
U. S. Commissioner.

Order, cause fixed for trial.—Extract from the minutes of 30th of January, 1865.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

55 On motion of R. Waples, esq., U. S. attorney, ordered that the above-entitled and numbered case be assigned for trial at the hour of 11 a m. on Friday, 3rd February, 1865, and that all the parties interested be notified thereof.

Notice of trial.—Issued January 30th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

To the att'y-gen'l, B. L. Lynch, esq.:
You are hereby notified that the above cause has been assigned for trial on Friday, the 3rd day of February, 1865, at 10 a. m.
By order of court.
New Orleans, January 30th, 1865.
(Signed) K. LOEW, *D'y Clerk.*

Marshal's service.

Received, January 30th, 1865, and on the same day, month, and
56 year served a copy of the within notice on B. L. Lynch, esq., personally.
New Orleans, January 31st, 1865.
(Signed) M. EGAN,
D'y U. S. Marshal.

Notice of evidence.—Filed February 3rd, 1865.

U. S.
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } 7653.

Libellants offered in evidence the warrant, monition, and marshal's return, and the evidence of John A. Newell and J. E. Wallace, taken before U. S. Commissioner Claiborne, 19th April, 1864; that of R. R. Barrow, taken 18th May, 1864; that of Robert Dalton and Harmon Doane, taken 19th January, 1865, and that of Alex. White and Joseph Howell taken 25th January, 1865, all before the same commissioner.

Hearing and decree of condemnation.—From the judgment docket.

UNITED STATES
versus
57 10 LOTS OF GROUND, THE PROPERTY of Charles M. Conrad. } No. 7653.

This cause came up for trial. District attorney for libellants.

And the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons entered, and the law and the evidence duly considered.

It is thereupon, on motion of R. Waples, esq., U. S. attorney,

Ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree that the ten (10) lots of ground, with the buildings and improvements thereon, the property of Charles M. Conrad, a full description whereof is contained in the libel on file, be, and the same are hereby, condemned as forfeited to the United States.

And it is further ordered and decreed that the clerk of this court issue a writ of venditioni exponas to the marshal of the district,
58 returnable on 15th of March, 1865, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenor to the proceeds being reserved for further action.

Judgment rendered February 3d, 1865. Judgment signed February 8th, 1865.

(Signed) E. H. DURELL, *Judge.*

Venditioni exponas.—Issued February 10th, 1865.

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas, at a district court of the United States, holden at New Orleans, for and within said district, on the third day of February, A. D. 1865, ten lots of ground, with all the buildings and improvements thereon, the property of Charles M. Conrad, fully described in the libel of information on file, were, after proclamation and due proceedings
59 had, decreed forfeit and ordered to be sold at public auction:

These are, therefore, to command you to sell to the highest bidder, at public auction, at Merchants and Auctioneers' Exchange, 18 Royal street, within said district, on the 22d day of March, 1865, at 12 o'clock m., the said property, first giving thirty days' notice, at least, of the time and place of sale, by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs.

And make due return hereof, with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 10th day of February, A. D. 1865, and the 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

60 UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Pursuant to this precept, I have caused the property within named to be sold by public auction, and to the highest bidder, at Merchants and Auctioneers' Exchange, 18 Royal street, on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under:

Rufus Waples,	2 lots on Camp street, between St. Joseph & Delord streets	$650 00
Do.	1 lot on Camp street and 4-story brick store	5,200 00
Do.	1 lot fronting on New Levee and Fulton streets, and improvements	1,300 00
B. W. Burbank,	undivided half of lot fronting on Julia street, and improvements	1,075 00
61 Rufus Waples,	1 lot on Carondelet, between Hevia and Poydras s'ts, and 3-story brick store	1,550 00
J. T. Stevenson,	4 lots on Prytania street, between First & Second s'ts	450 00
	Total am't sales	$10,225 00

Reference is made to the certificate of the recorder of mortgages.

Whereby the sales amounted to ten thousand two hundred and twenty-five dollars, which I pay over to Cha's Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUDOUIN,
D'y Marsh'l.

Received from Cuthbert Bullitt, United States marshal, ten thousand two hundred and twenty-five dollars, being (as he saith) the proceeds of the aforegoing sale, the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) CH'S CLAIBORNE, *Clerk.*

NEW ORLEANS, *March 30th*, 1865.

62 *Certificate of mortgages.—Referred and annexed to venditioni exponas.*

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that, in the records in his office, there are no other mortgages standing in the name of Charles M. Conrad and recorded against the property described in the printed slip hereto annexed, than the following, to wit:

1st & 2. (B., p. 1, fo's 370 and 391.) The privileges in favor of the board of commissioners of the first and second drawing districts on the property within their respective limits.

3rd. (L., p. 1, f. 102.) The privilege in favor of the city of Lafayette, amounting to $114.44, for sidewalk in front of property lastly described, recorded January 20th, 1862.

63 4°. (B. 51, f. 299.) The one by him granted in favor of E. A. Canon, judge of the 2d dis't court, as per act before H. B. Cenas, notary, dated 8th and recorded 10th April, 1847, on the 2dly, 5thly, 1stly, and 4thly-described properties, to secure, 1st, the reimbursement of the portion accruing to his minor children, Charles M. A. and Lawrence Louis Conrad, out of the price at which the real estate belonging to the community between him *as* his deceased wife, and which was adjudicated to him, amounting $7,062.50, and, 2d, to secure the faithful performance of his duties as tutor of said minors.

5th. (B. 62, fo. 551.) The reversion he assumes by act before E. L. Lewis, notary, the 20th June, recorded July 1st, 1853, up to $1,980 and interest.

6th. (B. 60, f. 325.) Of the mortgage granted by Michael Aspil on the property 3dly described, in favor of municipality No. 2, per act before H. B. Cenas, notary, the 25th March, and recorded the 18th May, 1852, to secure $2,642 and interest.

7th. (B. 66, f. 448.) The one he granted as tutor, &c., in favor
64 of J. N. Lee, judge of the 2d dis't court, per act before W. Christy, notary, dated the 31st May and recorded the 1st June, 1855, to secure the rights of his said minor children in the succession of their deceased mother, amounting to $7,062.50, on the 4thly-described property.

New Orleans, March 22d, 1865.

(Signed) J. W. MADDEN,
Recorder.

[5-c't rev. stamp.]

Printed slip annexed and referred to in above certificate.

1st. Two lots of ground, situate in suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 and 8 on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of C. W. Christy. Said lots adjoin each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, English measure; together with the four-story brick store thereon situate, in the
65 first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet between parallel lines.

3rd. A certain lot of ground, situate on the batture in front of the first district, in square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11 on a plan by J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line dividing it from lot No. 12, American measure, together with all the buildings and improvements thereon.

4th. The one undivided half of a certain lot of ground, sit-
66 uate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Tchoupitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining

the property of Peters, Miller, and others, 55 feet 7 inches in width in the rear, adjoining the fire-engine co. No. 6; the whole in conformity to a plan drawn by Jos. Pillie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

5th. All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet
67 street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary line of lot No. 4; the place between the stable and the yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

6th. Four certain lots of ground, situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, and 4, on a plan by Kneel and Werner on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, and 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania streets.

Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania
68 street, by 120 feet deep, between parallel lines.

TERMS.—Cash at time of adjudication, in U. S. Treasury notes.

United States marshal's office, New Orleans, 14th day of February, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Fe. 15, 22; M'r 8, 15, 22.

Taxation of costs.—Extract from the minutes of April 5th, 1865.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

It is ordered, adjudged, and decreed that the costs and *and* charges in this case be taxed as follows, viz:

Dist. att'y for services to 30th June, '64, 2%.....	$204 50
subsequent.....	25
A. Shaw, ex-clerk	25 60
C. Claiborne, do	50 80
U. S. Com'r fee	20 00
C. Bullitt, marshal.....	385 74
J. Graham, ex do.	93 44
Registrar's com. 1%...	102 25
	$907 33

69 *Decree of distribution.—Extract from the minutes of 13th April, 1865.*

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

The marshal having returned into court the writ of venditioni exponas, showing that the libelled property was sold for $10,225 00

It is ordered, adjudged, and decreed, that after deducting the costs heretofore taxed and allowed, amounting to $907 33

The U. S. dis't tax	103 56	
City tax 1862, int. & com	654 95	
" " 1863, " "	757 05	
Clerk's & sheriff's fees	8 50	
City tax 1864	930 00	
State tax 1861	304 80	
" " 1862	303 95	
" " 1863	303 95	
" " 1864	219 90	
& drainage tax	32 02	
		4,526 01
the balance of		$5,698 99

be paid into the Treasury of the United States according to law.

70 *Rule to correct the marshal's return.—Filed April 4th, 1868.*

United States district court for district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF CHARLES M. Conrad. } No. 7653.

On motion of Sullivan, Billings, and Hughes, of counsel for Charles M. Conrad, the defendant in this case, and of C. M. Conrad, said defendant, in proper person, and on giving the court to understand and be informed that the return made by the marshal of this district, formerly the eastern district of Louisiana, on the order or warrant of seizure issued in this case, showing how the same was executed, in the following words and figures, to wit:

"1st. Received August 8th, 1863, and in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of the libel of information, this warrant, and the or-
71 der of the judge, on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in this city of New Orleans, on the 11th, 15, 19, 22, 25, 29, August 1863. Returnable 31 August, 1863.

"(Signed) JAMES GRAHAM,
" U. S. Marshal,"

is erroneous in several particulars, but especially in this, that the said marshal therein states that he seized and took into his possession the

within-described property, meaning the property described in said warrant or order, whereas, in fact and in law, no such seizure was ever made, and said marshal never did, in fact nor in law, take possession of said property, and that this, the said Charles M. Conrad, is about to apply to the hon. the circuit court of the U. S. for the 5th circuit and this district for a writ of error to this hon. court, for the purpose of reviewing the proceedings and the judgment herein.

72 It is ordered that Samuel H. Torry, esq., U. S. district attorney for the district of Louisiana, do show cause on the 20th day of April, in the year 1868, at 11 a. m., why said errors in said return should not be corrected, and said return be so amended as to make the same conform to the facts in the case.

It is further ordered that a copy of this motion be served on Rufus Waples and E. W. Burbank, the purchasers of the property libelled in this case, at the sale thereof made under the judgment or decree heretofore rendered in this case.

Personally came and appeared before me Charles M. Conrad, who made oath that he believes, and has good reason to believe, that the allegations contained in the foregoing motion are correct and true.

(Signed) C. M. CONRAD.

Sworn to and subscribed before me this 4th April, 1868.

(Signed) K. LOEW, *U. S. Com'r.*

Marshal's return.

73 Received, April 7th, 1868, by the U. S. marshal, and on same day of April, '68, served copy of within motion, &c., on E. W. Burbank, named herein, personally, at office, 71 Tchoupitoulas street, in this city; and on 8th day of April, '68, served copy of same on Rufus Waples, att'y named herein, personally, at his domicil, 116 Chestnut street, in this city.

New Orleans, April 10th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Exception to rule.—Filed April 17th, 1868.

District court of the United States for the district of Louisiana.

UNITED STATES *vs.* TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad.	No. 7653.

Exception to rule in the cause numbered 7653 of the docket of the late district court of the United States for the eastern district of Louisiana.

74 Now comes the United States of America, libellant in this cause, by Sam'l H. Torrey, its duly-constituted attorney, and, considering the rule to show cause, taken in this cause on the 4th day of April, A. D. 1868, a copy of which rule is hereunto attached, and said that for and in behalf of the United States of America he excepts to all and singular that matters contained and set forth, and the object and

relief sought for in said rule, and to the right and authority in law of this court to entertain and consider the same, and for cause, among other things, shows:

1st. That the said Charles M. Conrad, plaintiff in said rule, made default in this cause, and failed and neglected to appear and defend said cause in due time and within legal delay, and by the duly rendered and recorded final sentence, judgment, and decree of the district court of the United States for the eastern district of Louisiana, the property
75 named and described in the libel in this cause, was condemned, and all persons having any interest therein pronounced in default; and the said sentence and judgment carried into effect before the date of the taking of the said rule, and that said rule was taken before and without any claim having been made to said property or any part thereof by said plaintiff in rule, as appears by the record of the court, whereby said plaintiff in rule is without any legal status in this cause, for the purpose set forth and sought to be effected by said rule.

2d. That the official return of the United States marshal, sought to be effected by said rule, is a part of the judicial record in this cause, and cannot, in law, be permitted to be falsified, altered, avoided, or contradicted by any proceeding in this cause, at the instance of any per-
76 son or party claiming to be a party to the cause, but as to all such persons, said return is binding, final, and conclusive.

3d. That the marshal is by law prohibited from contradicting said return in manner as sought by said rule.

4th. That the court has no power, in law, to alter, contradict, or change the said return of said marshal, the same being the official act of the said marshal, and for which he is responsible.

5th. That the court is without power and authority to compel the said marshal to amend, contradict, or change his return in any respect, but the same as made and returned by said marshal, as in law binding, final, and conclusive, as to all manner of persons who might, in due time, have appeared and claimed said property, or any part thereof.

6th. That final decree and judgment having, in this cause, been
77 rendered and carried into effect without any appearance and claim interposed in this cause by said plaintiff in rule, this court is without authority in law, but by law is prohibited, from entertaining any proceeding at the instance of said plaintiff in rule, tending to impeach and falsify its judgment and decree in this cause, by impeaching, contradicting, or falsifying any portion of the judicial record in this cause, upon which said judgment and decree *is* based, as sought to be done by said rule.

7th. That the said return of the said marshal is a portion of the judicial records of the court in this cause, and cannot be impeached, varied, contradicted, or avoided by proof aliunde of any character, or from any source, so as to alter, affect, increase, or diminish its legal import and effect as a judicial record in this cause, and that the truth and
78 verity of the same cannot be questioned in this cause by rule or otherwise.

Wherefore the said district attorney of the United States for and in behalf of the libellant in this cause prays this honorable court that the said rule be dismissed with costs.

(Signed) SAM. H. TORREY,
U. S. Att'y.

Exception of late marshal.—Filed April 20th, 1868.

U. S. district court.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } 7653.

Now into court here comes James Graham, late U. S. marshal for the eastern district of Louisiana, whose official return is a part of the record in this cause, and which return is sought to be contradicted by the rule taken in this cause by C. M. Conrad, now on file and of record herein, and for cause against the same saith:

79 That he accepts to all and singular the matters and relief sought for in said rule for this: That the official return sought to be affected and contradicted by said rule is his official act, made and done by authority of his office, while in office, and within the purview of his duties in such office; that he has not asked to have the same altered, amended, changed, or contradicted; that he asserts said return to be true and correct, and stands by the same as his official act.

Wherefore he prays said rule be dismissed with costs.

(Signed) JAMES GRAHAM,
Late U. S. Marshal.

(Signed) HONOR AND BENEDICT,
(do.) J. R. BECKWITH,
Atty's.

Order: Rule continued.—Extract from the minutes of 20th April, 1868.

U. S.
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

80 The rule taken by C. M. Conrad on the 4th inst. was called up for trial, and, by consent of counsel, continued till Thursday, the 7th May, 1868, at 11 a. m.

Order: Rule continued.—Extract from minutes 7th May, 1868.

U. S.
vs.
10 LOTS OF GROUND. PROPERTY OF C. M. CONRAD. } No. 7653.

For want of time it is agreed by counsel that the rule in the above case be taken up and tried on Wednesday, 13th inst., at 11 a. m.

Order: Rule continued.—Extract from minutes 13th May, 1868.

U. S.
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

For want of time it is agreed by counsel that the rule in the above case be taken up on Monday, the 25th inst., at 11 a. m.

81 *Hearing and continuance.—Extract from the minutes of May 25th, 1868.*

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

The rule taken by the defendant on 4th April last was called up—Sullivan Billings and Hughes, Semmes and Mott, and C. M. Conrad and Sons, for plaintiffs in rule; S. H. Torrey, U. S. att'y, assisted by Rufus Waples, ex-dist.-att'y, Honor and Benedict, J. R. Beckwith, L. M. Day, and J. B. Weller, for def'ts in rule—when, after hearing the argument of J. R. Beckwith and L. M. Day in support of the exceptions to the rule, the further hearing is continued till to-morrow, 26th inst., at 7 o'clock p. m.

Order: Rule re-assigned.—Extract from the minutes of 26th May, 1868.

UNITED STATES
vs.
82 PROPERTY OF C. M. CONRAD. } No. 7653.

Ordered that the rule in the above case, fixed for this day at 7 p. m., be transferred to Saturday, 30th inst., at 11 a. m., and that all parties in interest be notified thereof.

Order and continuance.—Extract from the minutes of 30th May, '68.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

The rule in the above case came up agre'ably to continuance, counsel on both sides being present, and after hearing further argument the court took time to consider, and allowed the parties twenty days to furnish briefs.

Order postponing decision.—Extract from the minutes of 14th July, 1868.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

83 Ordered that the decision in the above case, upon the question submitted, be deferred till the next term of the court, and that the parties have leave to furnish additional briefs.

Reasons for judgments.—Filed July 16th, 1868.

U. S. district court dist. of Louisiana:

(1.) UNITED STATES
vs.
—LOTS OF GROUND, PROPERTY OF D. F. KENNER. } No. 7642.

(2.) UNITED STATES *vs.* —LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

(3.) UNITED STATES *vs.* —LOTS OF GROUND, PROPERTY OF F. H. HATCH. } No. 7749.

On the motion taken by defendants to correct or amend the marshal's return.

In compliance with the request of counsel the court will briefly state in writing the grounds which were orally assigned for the decisions rendered by the court in these cases overruling the motions
84 made by defendants that the court should correct certain words alleged to exist in the marshal's return to the warrant of seizure.

The grounds on which the motion is based is, that at common law an error of this description could be corrected by means of a writ of error, coram vobis, and that in modern practice this writ is generally dispensed with, and whatever could be done under it can be done on mere motion.

Admitting this to be true, the question arises, is the alleged error of the character of those that could be corrected by the writ of error, coram vobis? I think not. See Tidd's Practice, p. 1191; Fitz Herbert Matier'a Breviaum, 21; Writ de Error, Bacon 2, p. 484; Error, 16; Year Book 33d, Edward 1, A. D. 1305, p. 356.

This last decision was rendered more than five centuries ago, and I have been unable to find any decision by which the doctrine
85 therein laid down has been overruled.

The principle is generally recognized that, as between the parties to the suit, the return of the sheriff imports an absolute verity.

The motions must therefore be dismissed.

There is another reason why they should be dismissed:

Fortunately or unfortunately these suits have all been instituted on the admiralty side of this court, and the proceedings therein have been conducted agreeably to its practice in admiralty cases. But in several decisions recently rendered the Supreme Court of the United States (see the case of the United States vs. Union Insurance Co. and several others similar to it) have determined that this was a mistake; that seizures on water only can be tried in admiralty; but that seizures on land should be conducted and tried in the same manner provided for revenue
86 seizures on land, including a trial of issues of fact by a jury.

That court has even gone further. They have decided that proceedings for the confiscation of property under the acts of August 6th, 1861, and July 17th, 1862, are in the nature of criminal prosecutions, and must to the rules prescribed by the constitution and the laws for criminal trials.

It follows from these decisions that every step that has been taken in these cases, from beginning to end, is wrong, and consequently that the decree of condemnation founded on these proceedings are absolute nullities, and can form no title to property sold under them.

Bond for writ of error.—Filed January 19th, 1870.

Know all men by these presents that we, Charles M. Conrad as principal, and Duncan F. Kenner as his surety, are held and firmly

87 bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, this 14th day of January in the year 1870.

Whereas the above-named C. M. Conrad has prosecuted to the circuit court of the United States for the fifth circuit and district of Louisiana a writ of error, to reverse the decree or judgment rendered by the district court of the United States for the eastern district of Louisiana, in the above entitled suit;

Now, therefore, the condition of this obligation is such that if the above-named C. M. Conrad shall prosecute his said writ of error to effect, and answer and pay all such costs as, upon affirmance, may be adjudged against him if he shall fail to make good his plea, then

88 this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) DUNCAN F. KENNER. [L. S.]
(") C. M. CONRAD. [L. S.]

Sealed and delivered in the presence of—
J. A. CHARBONNET.

The foregoing bond is approved.
(Signed) E. H. DURELL,
Judge of the District Court U. S. for the District of Louisiana.

District court of the United States, district of Louisiana, formerly eastern district.

I certify that the foregoing 152 pages do contain and form a correct and complete transcript of all the proceedings, documents filed, and evidence adduced in the case of the United States vs. 10 lots of ground, property of Cha's M. Conrad, No. 7653 of the docket.

In testimony whereof I hereto set my hand and the seal of our court, at New Orleans, this 19th January, 1870.

[SEAL.] (Signed) CH'S CLAIBORNE, *Clerk.*
P'r K. LOWE, *D'y Clerk.*

89 PROCEEDINGS IN U. S. CIRCUIT COURT.

Assignment of error.—Filed April 25th, 1870.

Circuit court of the United States.

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND,
vs.
THE UNITED STATES OF AMERICA. } No.

And now comes into court Charles M. Conrad, and says that in the record and proceedings in this case there is manifest error, in this, to wit:

That the libel herein and the matters therein contained are not sufficient in law for the said United States to have or maintain its aforesaid action against the said Charles M. Conrad.

There is also error in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid given was given for the said United States against the said Charles M. Conrad, whereas, by the law of the land, the said judgment ought to have been given for the said
90 Charles M. Conrad and against the said United States.

Said Charles M. Conrad further sets forth the following errors in said proceedings and decree, to wit:

1st. That said proceedings were, in their nature and substance, a prosecution for crimes and offences alleged to have committed by said Charles M. Conrad against the United States, and said Charles M. Conrad was never lawfully held to answer, by a presentment or indictment of a grand jury, nor was he ever tried for or convicted of the same by a jury; nor was he ever informed of the nature or cause of the accusation against him, nor had he any knowledge thereof, or any opportunity of being confronted with the witnesses against him, or to have compulsory process for obtaining witnesses in his favor; all of which was contrary to Article 3, sec. 2 (§ 2) of the Constitution of the United States, and to Articles Nos. 5 and 6 of the amendments to the same.

91 2d. That even if proceedings should be decided to be of a purely civil nature, the court before which they were instituted and conducted had no jurisdiction of the same.

3rd. That no lawful seizure of said property was ever made, either before or after said proceedings were instituted, or, if seized, no notice of said proceedings was ever given to said Charles M. Conrad, and the court had no jurisdiction of the same.

4th. That no notice, actual or constructive, of said proceedings was ever given to said Charles M. Conrad.

5th. That the description given by the marshal's monition of the property libelled in said case was inaccurate, insufficient, and not such as to give information of the seizure thereof, even if any such seizure had been made.

6th. That the acts charged against said Charles M. Conrad were not alleged to be contrary to the statute in such cases made and provided.

7th. That the facts in said case, if found at all, were found by
92 the judge and not by a jury, and that without having any witnesses.

8th. That, by the decree rendered in said case, all the right, title, and interest of said Charles M. Conrad in and to said property was condemned as forfeited to the United States, whereby said decree did attempt to work a forfeiture of said property absolutely, and beyond the life of said Charles M. Conrad, contrary to the Constitution of the United States and to the act of Congress approved 17th July, 1862, on which said proceedings were based, and to the resolution passed on the same day explanatory thereof.

And the said Charles M. Conrad prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgment, &c., &c.

(Signed) C. M. CONRAD & SON,
(Do.) BILLINGS & HUGHES,
Attorneys for Plaintiff in Error.

Rule and grounds.

Circuit court of the United States, fifth circuit and district of
93 Louisiana. April term, A. D. 1870.

NEW ORLEANS, *Saturday, 7th of May*, 1870.

Court met pursuant to adjournment—
Present, Hon. W. B. Woods, presiding judge.
" Hon. E. H. Durell, district do.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

On motion of A. B. Long, U. S. district attorney, ordered that Charles M. Conrad, plaintiff in error in above cause, show cause on 14th instant, at 11 a. m., why the writ of error herein should not be dismissed on the grounds filed.

Marshal's return.

Received May 9th, 1870, by the U. S. marshal, and on the 10th day, same month and year, served copy of within rule on the within-named Charles M. Conrad, by leaving the same at his office, No. 37 Carondelet street, in the hands of his son, C. A. Conrad.
New Orleans, May 10th, 1870.
(Signed) S. W. REED,
D'y U. S. Marshal.

94 *Rule and grounds.*

April term, 1870.

NEW ORLEANS, *Friday, 13th day of May*, '70.

Court met pursuant to adjournment—
Present, Hon. W. B. Woods, presiding judge.
" Hon. E. H. Durell, district judge.

UNITED STATES
vs.
10 LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 6039.

On motion of A. B. Long, U. S. att'y, ordered that plaintiff in error show cause on Saturday, 21st instant, at 11 a. m., why the writ of error in this case be not dismissed on the grounds filed.

Marshal's return.

Received, May 14th, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within rule on C. M. Conrad, pl't'ff in error, by leaving the same at his office, No. 37 Carondelet street, in the hands of C. A. Conrad, att'y.
New Orleans, May 14th, 1870.
(Signed) S. W. REED,
D'y U. S. Marshal.

95 *Order: Rule of 7th May, 1870, dismissed.—Extracts from minutes of May 17th, 1870.*

April term, 1870.

NEW ORLEANS, *Tuesday, May 17th*, 1870.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, presiding judge.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

For the reasons orally assigned by the court in the case of the U. S. vs. 16 lots of ground, the property of D. F. Kenner, No. 6038 of the docket, it is ordered that the rule to dismiss, taken on 7th instant, be discharged with costs.

Withdrawal of rule of May 13th 1870.—Extract from minutes of May 21st, 1870.

C. M. CONRAD, OWNER OF 10 LOTS OF GROUND, &c., pl'ff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

On motion of the district attorney, it is ordered that the rule to dismiss the writ of error in the above case, entered on the thirteenth instant, be withdrawn.

96 *Joinder in error.—Filed May 23d, 1870.*

United States circuit court for 5th circuit & district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF CONRAD. } In error. No. 6039.

And afterwards, to wit, on the twenty-third day of May, in April term, in the year of our Lord one thousand eight hundred and seventy, the said United States, by A. B. Long, its attorney, freely comes here into court and says there is no error either in the record and proceedings aforesaid or in the giving of the judgment aforesaid, and prays that the said circuit court of judication, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

(Signed) A. B. LONG,
U. S. Attorney.

97 *Hearing and continuance of cause.—Extract from minutes May 27th, 1870.*

April term, 1870.

NEW ORLEANS, *Friday, May 27th*, 1870.

Court met pursuant to adjournment; present, his honor J. P. Bradley, associate justice of the supreme court, presiding. Present, his honor W. B. Woods, judge of the circuit court.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

The above cause came on to be heard on the transcript of the records from the district court of the U. S. for the district of L'a. A. B. Long, U. S. attorney, for def'd't in error. T. A. Clark, Conrad & Son, Semmes and Mott, E. C. Billings, for pl't'ffs in error. And after hearing the opening argument of Thomas Allen Clarke, esq., the causes are continued till to-morrow, at 10 o'clock, a. m.

Order to detach certain proceedings from the transcript of the U. S. district court.—Extract from minutes May 28th, 1870.

UNITED STATES
vs.
98 10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

On motion of counsel for pl'ffs in error, the district att'y being present, and on suggesting that by a clerical error a libel of review filed by pl'ffs in error, and the proceedings thereon, had been included in the transcript of the records in these cases prepared for this court—

It is ordered that the clerk of this court be authorized to detach said proceedings from said transcript, the same be irrelevant to these cases.

Hearing and continuance.—Extract from minutes May 28th, 1872.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

This cause was resumed, and after hearing the argument of C. M. Conrad and L. M. Day, the same is continued till Tuesday, 31st, at 11 a. m.

99 *Hearing and submission.—Extract from minutes May 31st*, 1870.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 6039.

This cause was resumed; and, after hearing argument of L. M. Day, J. B. Weller, U. S. att'y Long, &c., for def'ts in error, and that of E. C. Billings and C. M. Conrad for pl't'ffs in error, the court took time to consider.

Order: Decision withheld.—Extract from minutes June 11th, 1870.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 6039.

In this case, for reasons assigned, the court withholds its decision until the next term of the Supreme Court of the U. S.

Decree from judgment-book.

Circuit court of the United States, fifth circuit and district of Louisiana, April term, 1872.

NEW ORLEANS, *Thursday, June 20th*, 1872.

100 Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice Supreme Court.

UNITED STATES
vs.
10 LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } In error at the suit of C. M. Conrad.—No. 6039.

For the reasons assigned and on file in suit No. 6158 of the docket—It is ordered that the decree of confiscation pronounced by the district court on the 3rd February, 1865, be avoided and reversed, and it is now ordered, adjudged, and decreed by this court that the libel of information in this cause be dismissed, with costs, and that the plaintiff in error is entitled to be paid the nett proceeds of the property sold under said judgment, less encumbrances paid, but that the said sale do stand confirmed.

Decree rendered June 20th, 1872.

Decree signed June 20th, 1872.

(Signed) JOSEPH P. BRADLEY,
Associate Justice Supreme Court United States.

101 *Motion and order.—Extract from minutes June 20th, 1872.*

April term, 1872.

NEW ORLEANS, *Thursday, June 20th*, 1872.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice of the Supreme Court.

UNITED STATES
vs.
10 LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 6039.

On motion of the district attorney, it is ordered by the court that upon his sueing out a writ of error, and lodging copy thereof in the clerk's office within 10 days, the same shall operate as a supersedeas.

Petition and order for writ of error.—Filed June 28th, 1872.

To the honorable W. B. Woods, judge of the circuit court of the United States for fifth circuit and district of Louisiana:

Humbly shows, the petition of Charles M. Conrad, of the city of New Orleans, that your petitioner is informed and believes that there
102 is manifest error to his prejudice in a final judgment rendered by the circuit court of the United States for the fifth circuit and district of Louisiana, on the 20th day of June, 1872, and signed by the judge on the same day, in a certain suit or proceeding therein, entitled C. M. Conrad, the owner of ten lots of ground, plaintiff in error, vs. The United States, defendant in error, and numbered 6039 of the docket of said court:

Wherefore your petitioner prays that your honor will allow a writ of error to said circuit court in said case.

(Signed) C. M. CONRAD & SON,
(Do.) BILLINGS & HUGHES,
Att'ys for Pl'ff in Error.

Order.

A writ of error is allowed in this case, as prayed for, and, according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, and con-
103 ditioned as the law directs.

June 28th, 1872.

(Signed) W. B. WOODS, *Judge.*

Bond for writ of error.—Filed June 28th, 1870.

Know all men by these presents that we, Charles M. Conrad, as principal, and Charles A. Conrad, as surety, are held and firmly bound unto the U. S. of America in the full & just sum of five hundred dollars, to be paid to the said United States, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 27th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein said C. M. Conrad was
104 plaintiff in error, and the said United States was defendant in error, judgment was rendered against the said Charles M. Conrad; and the said Charles M. Conrad having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Charles M. Conrad shall prosecute his writ to effect, and answer all

damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) C. M. CONRAD. [L. S.]
(Signed) CHA'S ANGELO CONRAD. [L. S.]

Sealed and delivered in the presence of—
(S'g'd) F. B. VINOT.

Approved.
(Signed) W. B. WOODS, *Judge.*

105 *Assignment of error.—Filed July 8th,* 1872.

Supreme Court of the United States.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
UNITED STATES, DEFENDANT IN ERROR.

And now comes into court Charles M. Conrad, and says that in the record and proceedings and decree in this case there is manifest error to his prejudice in this, to wit:

That so much of said decree of the circuit court as declares that the sale of the property condemned stands confirmed, and that plaintiff is entitled to receive the nett proceeds of said property, (less encumbrances paid,) is contrary to law, the question whether said sale is valid or not not being in any way submitted to the court, and the persons interested not being all parties herein.

106 Wherefore he prays that said judgment of the circuit court be amended, and be reversed in so far as it declares that the plaintiff in error is entitled to be paid the nett proceeds of the property sold under the said judgment, but that the sale do stand confirmed.

(Signed) C. M. CONRAD AND SON,
(Signed) BILLINGS AND HUGHES,
Att'ys for Plaintiff in Error.

107 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 106 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of C. M. Conrad, owner of ten lots of ground, plaintiff in error, vs. The United States, defendants in error, No. 6039 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of November, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 12th day of November, A. D. 1872.

E. H. DURELL, *Judge.*

108 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between The United States of America, libellant, and ten lots of ground, the property of Charles M. Conrad, being number 6039 of the docket of the said circuit court of the United States in & for said circuit & district, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 21st day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

F. A. WOOLFLEY,
Clerk of the United States Circuit Court,
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6039. The United States, plaintiffs in error, versus Ten lots of ground, the property of Cha's M. Conrad. Writ of error. Filed June 21, 1872. F. A. Woolfley, clerk.

109 THE UNITED STATES OF AMERICA:

U. S. circuit court, district of Louisiana.

The President of the United States to Charles M. Conrad, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America

is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-two.

JOSEPH P. BRADLEY,
Associate Justice of Sup. C't U. S.

110 (Indorsed:) United States circuit court. No. 6039. The United States, plaintiffs in error, vs. Ten lots of ground, the property of Cha's M. Conrad. Citation.

Marshal's return.

Received June 24, '72, from U. S. marshal, and on the 25th day of June, 1872, did serve a copy of the within citation of appeal personally on C. M. Conrad, esq., in this city.

New Orleans, June the 25th, 1872.

S. W. REED,
D'y U. S. Marshal.

On this 25th day of June, 1872, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 283. The United States, plaintiff in error, vs. Charles M. Conrad, claimant of certain lots of ground. Louisiana C. C. U. S. Filed 27th November, 1872.

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CONDITION OF ORIGINAL

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
CHARLES M. CONRAD, *Claimant of certain lots of ground.*
No. 283.

BRIEF ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, *Plaintiffs in Error*,
vs.
CHARLES M. CONRAD, *Claimant of certain lots of ground.*
No. 283.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

This is a case in error to the circuit court of the United States for the district of Louisiana, applied for by the United States district attorney in Louisiana to Honorable Joseph P. Bradley, on the 20th June, 1872. (See Record, p. 34, foot; writ, p. 37; citation to Conrad, and personal service on him, pp. 37 and 38.)

The case had been brought in error to the United States circuit court in Louisiana from the district court by Conrad. (See motion and petition, Rec., p. 1; writ and citations, and service, Rec., pp. 2 and 3.)

On the 9th August, 1863, the United States district attorney in Louisiana proceeded, by the means of a libel of information against ten lots of ground in the city of New Orleans, to procure their condemnation and forfeiture to the United States, under certain provisions of the act of 17th June, 1862. (12 Stats., pp. 589, *et seq.*)

The causes of forfeiture and condemnation set forth in the libel are the acts imputed by its expressions to the owner of the lots, Charles M. Conrad, charging, in the alternative, that he was embraced in one or the other of the classes of persons enumerated as enemies of the United States in the act of June 17, 1862, as will appear by reference to the 5th, 6th, 7th, and 8th sections of the libel of information, framed to correspond with and adopting the descriptive language of the act of Congress quoted. (See Rec., p. 6.)

Order of publication having been made, (see Rec., pp. 7 and 8,) a warrant of seizure was issued to the United States marshal, with a schedule of the property, ordering him to seize it, and admonish the owners and all persons interested to appear, (Rec., pp. 7, 8, and 9,) which was done.

No claim having been interposed, a judgment by default, and as if *pro confesso*, was ordered by the district court. (See Rec., p. 12.)

On the 3d February, 1865, the United States district court condemned the property as forfeited to the United States. (See Rec., p. 19, top.)

The property was sold under the judgment of the court, on March 15, in the usual mode. (See Rec., p. 20.)

So matters remained until January, 1870, when C. M. Conrad, the former owner of the property, when condemned, appeared in the district court and sued out his writ of error to the circuit court. (See p. 1.)

In the circuit court the judge ordered the decree of confiscation of the district court to be avoided and

reversed; the libel of information to be dismissed with costs; the plaintiff in error in the circuit court, C. M. Conrad, to be paid the net proceeds of the property sold under the judgment of the district court, less incumbrances paid; and that the sale stand confirmed. (See Rec., p. 84.)

The reasons for this judgment are found in the opinion of the judge, in the record of No. 201, this term, pp. 38 to 45.

The questions involved are solely such as arise upon the face of the record, and involve the regularity of the proceedings in the district court, and the power exercised over the judgment of that court by the circuit court.

There is now presented to the Supreme Court of the United States the following:

ASSIGNMENT OF ERRORS.

1. The court below erred in reversing the judgment of the district court.

2. The court below erred in dismissing the libel of information.

3. The court below erred in declaring the plaintiff in error there, Charles M. Conrad, entitled to the net proceeds of the property sold.

4. The court below erred in not sustaining the judgment of the district court, giving judgment in full in favor of the United States.

POINTS.

First. The proceedings in the district court were sufficiently regular. The act of June 17, 1862, sec. 7,

12 Stat., page 591, directs the proceedings to be had as nearly as may be according to the practice in admiralty and revenue causes. As this was in no degree an admiralty case, being a seizure of land, and no precedents existing under the statute, which was of itself novel in character, the course pursued was to file a libel of information against the property, have it seized and taken possession of by the United States marshal, publication made in the form of a monition, accurately describing the property and warning all persons pretending to claim to appear.

After the delays prescribed, no claim having been made, a judgment by default and *pro confesso* was entered. Subsequently, on proof satisfactory to the district court that the property had belonged to some one in the classes of enemies of the United States described in the act of June 17, a final judgment of condemnation was entered. This was a series of measures as closely resembling the ordinary proceedings in revenue and admiralty causes as the requirements of the statute demanded.

Second. The libel of information is sufficient in form. It is directed against a thing and not against a person. As an enemy's ship taken on the high seas, though unarmed and proceeding from one neutral port to another, is condemned by reason of its relation to one who is hostile, so this real property here was guilty by fiction of law because its owner was an enemy.

But it is said the libel does not sufficiently describe the owner as an enemy. It is not suggested that the property is not sufficiently described: its description is

actually or impliedly admitted to be accurate. The defect urged is the want of proper description of the owner, as the libel of information describes him in the alternative as one or the other of certain classes of persons named in the act.

This was no defect, which, had the owner appeared in the district court, could have availed him, because each alternative character in which the owner is described, if it stood alone, would make the property liable to condemnation.

The Caroline, 9 Wheaton, 386.

Jacob *vs.* The United States, 1 Brock., 520.

The Schooner Little Charles, 1 Brock., 347.

2 Parsons's Shipping and Admiralty, pp. 382, 383, (Little and Brown's edition of 1869.)

To sum up the law of the foregoing authorities in support of our proposition: This proceeding *in rem* is strictly a civil cause (3 Dallas, 297) on the law side of the court, (*ex parte* Graham, 10 Wallace, 541,) but the pleadings must conform to those of admiralty or revenue cases, (12 Stat. at Large, 591,) in which technical niceties are not required, (19 How., 162; 9 Wal., 670; 12 Wal., 173, 226;) nor the precision of a common-law indictment, (9 Wheat., 381,) or other proceedings in common-law courts, (1st Gallison, 31,) yet that less certainty will sustain a decree of condemnation; (12 Wheat., 1;) that alternative allegations are good when each alternative renders the *res* forfeitable, (9 Wheat., 381; 1 Brock., 520; *ib.*, 347; *ib.*, 384; 7 Cranch, 339, &c.,) and that the alternative form is sometimes preferable. (2 Parsons, 382.)

Third. The defect, if such it be, was only one of form, and was cured by the judgment.

Jacob *vs.* The United States, 1 Brock., 520.

Higgins *vs.* Highfield, 13 East., 407.

Act of 1789, sec. 32.

Fourth. The property seized being correctly described, the description of the owner is of secondary importance, and involves only the question of notice to him; he certainly could not have been deceived by it, and indeed notice is sufficiently given in proceedings *in rem* in admiralty and revenue cases by the seizure itself.

Fifth. The proceeding was not one of a criminal character; the owner of the property was charged with no crime; he was referred to only as an enemy; and in proceedings *in rem* in similar cases it has been repeatedly held that less certainty is required than in the common law forms.

The Palmyra, 12 Wheaton, 1.

Locke *vs.* United States, 7 Cranch, 339.

Sixth. The authorities already quoted show that the judgment of the circuit court was wrong in dismissing the libel and avoiding the judgment of the district court; it follows, then, that there was error also in directing the net proceeds of the property to be paid to Conrad, though that order may be correct if the former part of the judgment of the circuit court was correct.

G. H. WILLIAMS,
Attorney General.

C. H. HILL,
Assistant Attorney General.

THOS. J. DURANT.

Supreme Court of the United States.

UNITED STATES, Plaintiff in Error,

vs.

CHARLES M. CONRAD, Claimant of Certain Lots of Ground.

No. 283.

ERROR TO CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF LOUISIANA.

C. M. CONRAD & SON,
Attorneys for Defendant in Error.

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS, WASHINGTON, D. C.

Supreme Court of the United States.

UNITED STATES, Plaintiff in Error,

vs.

CHARLES M. CONRAD, Claimant of Certain Lots of Ground.

No. 283.

ERROR TO CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF LOUISIANA.

Whatever difference of opinion may exist in regard to the constitutionality of the act of 17 July, 1862, on which the proceedings in this case are founded, all must admit that the powers thereby conferred on the President and the judges of the District Courts are unusual, not to say unprecedented, in their character.*

The President was empowered by his mere order to dispossess thousands of people, against whom no accusation had been made, of their entire estate, and the judges to declare it forfeited by proceedings to which the owners would, in most cases, be parties only by a fiction of law.

The rule is well settled that those who set up title to property under proceedings of this character should show a strict and even liberal compliance with the terms of the law under which they purport to be instituted.

In Turner *v.* Walker (9 Wheat., 541) this court said: 548. "Since the jurisdiction was strictly special and limited, it is essential to the validity of the judgment, and of the proceedings under it, that the record should show that he (the

* See the remarks of W. Beach Lawrence on this act, in his Notes to Wheaton's International Law, last ed., p. 600.

judge) acted upon a case which the law submitted to his jurisdiction."

In Thatcher *v.* Powell (6 Wheat. 127) they say: "In summary proceedings, when a court exercises an extraordinary power, under a special statute prescribing its course, we think that course ought to be exactly observed, and those facts especially which give jurisdiction ought to appear, in order to show that its proceedings all are *coram judice.*" (See also Williams *et al. v.* Peyton's Lessee, 4 Wheat., 77.)

The books abound in cases in which this doctrine is upheld. (See Hennen's Digest, vol. 1, *verbo* "Attachment," p. 124.)

Parker *v.* Overman (18 How., 142,) was a direct action to recover property which had been sold for taxes. The court said: "In judicial sales under the process of a court of general jurisdiction, where the owner of the property is a party to the proceedings, and has an opportunity of contesting their regularity at every step, such objections cannot be heard to invalidate or annul a deed in a collateral suit; but one who claims title to the property of another under summary proceedings, where a special power has been executed, is bound to show every fact necessary to give jurisdiction and authority to the officer, and a strict compliance with the requirements of the statute." (See also Blackwell on Tax Titles, pp. 45 to ~~60~~ 52, edition, Chicago, 1855.)

In none of these cases are the justice and propriety of this rule more manifest than in those arising under the law we are now considering; for in none are the interests involved as large, nor the inability of the parties to protect their rights as complete. It must also be borne in mind that this law is penal in its character, and ought, therefore, to be strictly construed. Even those cases arising under the law of August, 1861, are so considered, although the forfeiture thereby imposed was not for an offense of the owner, but on account of the "predicament in which the

property itself was found." (Armstrong's Foundry, 6 Wall., 768, 770; 16 Wall., 431.)

We think we can show that, in these proceedings, the district attorney, the clerk, and the marshal vied with each other in disregarding the requirements of the law.

We call the attention of the court to the following mistakes committed by the one or the other of these officers:

1. That the property when libeled had not been seized by order of the President.

2. The suit was on the admiralty instead of the common law side of the court.

3. The warrant of arrest was not signed by the clerk.

4. The monition was insufficient and defective in several respects.

5. The "libel of information," as it is termed, was defective in being too vague and uncertain.

6. It does not conclude "against the form of the statute in such cases made and provided."

7. There was no judgment by default against defendant.

8. The case was tried by the judge and not by a jury.

9. There was no finding that the property seized belonged to the defendant or party accused.

We will briefly examine these irregularities and their effects.

No seizure by order of the President.

1. The 5th section of the act provides that, "to secure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all property, money, stocks, credits, and effects of the persons hereinafter mentioned," &c. The 6th section is to the same effect; and the 7th authorizes *proceedings in rem* to be instituted for the condemnation of this property "*after* it shall have been seized."

It is manifest that, under these provisions, proceedings against property under the act can only be commenced by authority of the President, to wit, by a seizure under his order. Congress might have conferred the power to ini-

tiate these proceedings on the Attorney General, or even on the district attorneys, as it had done in seizures under the act of 6th August, 1861, chap. 60, sec. 3. (12 Stats. at Large.)

In view, however, of the magnitude of the power conferred by this act act, and its liability to abuse,* they no doubt thought it could nowhere be so safely lodged as with the President, whose exalted position and high personal character were sufficient guaranties for its discreet and honest exercise.

The record contains no evidence that any such authority was given, or that any such seizure was made.

The libel alleges that the lots proceeded against had previously "been seized by the United States marshal, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorney thereof," &c., but neither the "instructions" of the Attorney General nor the "written authority" given by the district attorney to the marshal, nor any seizure by the latter, in virtue of such authority, appears. On the contrary, the record contains negative evidence that no such seizure was made. The return of the marshal to the warrant of seizure issued by the court states that "he had seized and taken possession of the property" in obedience to *that warrant*. From these expressions it may fairly be inferred that it was not already in his possession under a prior seizure.

The court will observe that the libel does not allege a seizure by order of the President, but by "authority" of the district attorney, under "*instructions*" of the Attorney General. Now no power was vested in either of these functionaries to order the seizure of property under this act.

No valid order, therefore, could be made by them or by

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* This liability is exemplified in the present case. Nearly all the property condemned was purchased by the district attorney and the marshal. (See marshal's return, p. 60-61.)

either of them in the matter, unless it was made by order of the President. If so made, the order was his, not theirs. He did not delegate his powers to them or either of them; he merely exercised them through them. They were merely the channels through which his orders were transmitted to the officer whose duty it was to execute them. If we are correct in this, it is evident that if any such seizure was made, it should have been declared upon as made by order of the President. Even in private transactions an agent does not bind his principal if, instead of acting in the name of the latter, he acts in his own name; *a fortiori*, where a public officer acts under the orders of his superior, more especially where the act is one which the superior alone was authorized to perform, his acts will only be viewed as the acts of the latter when they are declared upon as such.

This failure to aver and prove a seizure of the property by order of the President, prior to the institution of judicial proceedings against it, was fatal. The point has never been brought to the notice of this court, that we are aware of, probably because, in all the cases arising under the act of 1862 that have heretofore been decided by it, such a seizure was shown. Such was the case in Pelham *v.* Rose, 9 Wallace, 103–106; McVeigh *v.* The United States, 11 Wallace, —; Tyler *v.* Defrees, 11 Wallace, 347; Miller's Ex. *v.* The United States, 11 Wallace, 308. Indeed, in the three last mentioned cases, great stress was laid on this Executive seizure.

Bigelow v. Forrest 9 How. 341/9 Wall.

This court has often been called on to review proceedings founded on special statutes conferring extraordinary powers on the President, and has invariably construed such ~~cases~~ strictly, and held that the powers must be performed actually, or in legal contemplation by the President alone, and in the precise mode prescribed by the act. We will briefly refer to some of these cases.

any

Gellston *v.* Hoyt, 3 Wheat., 330, 333. This was a suit for damages against a marshal of the United States, for the unlawful seizure of a vessel. The defendant justified the

seizure *under an order of the President*, issued in pursuance of an act of Congress, which authorized the President to seize vessels for a violation of its provisions, and "to employ for that purpose the land and naval forces."

The court decided that the plea was insufficient, inasmuch as the act on which the seizure was founded authorized him to employ in making it "the land and naval forces," but said nothing about the marshal.

Wilcox *v.* Jackson, 13 Pet., 513. This case arose under an act of Congress, which directed the President to reserve from sale or private entry certain lands therein described, for an Indian agency and for military purposes. The lands were accordingly reserved by the Secretary of War, but were nevertheless "entered" and taken possession of by a party, and an action of ejectment was brought against him. The defense was, that the act authorizing the reservation had not been complied with, inasmuch as the reservation was not made by the President. The court sustained the reservation, but on the ground that "the President acts *through* the heads of departments, in relation to subjects which appertain to their respective duties," and that, as this reservation, whether for military purposes or as an Indian agency, appertained to the War Department. his act in the matter "was, in legal contemplation, the act of the President;" consequently, that this was a compliance with the terms of the act. (See also 16 Peters, 291 and 302.)

The Washita Cotton, 6 Wall., 521.
The Sea Lion, 5 Wall., 630.

These two cases arose under the act of 1861, which authorized the President to grant, whenever in his discretion he deemed it advisable, special licenses to parties to trade within the lines of the Confederate authorities. In the first of the above cases a license to trade was granted by the military authorities of the district. But the validity of this license was denied, and the court (Swayne, J., being its organ) said: "No license was given by the President to

either of the parties by whom the purchases of cotton were made from the rebel government; those given by the military authorities were nullities—they conferred no rights whatever—no one could give them but the President. From any other source they were void. The law-making power, in its wisdom and caution, confided this important authority, so liable to be abused, to the Chief Magistrate alone."

In the other case the license had been granted by a "special agent" of the Treasury Department, with the sanction of the military commander of the district and the collector of the port.

But the court, through the same organ, say: "It finds no warrant in the statute. The statute prescribes that the President shall license the trade. The only function of the Secretary of the Treasury was to establish the rules by which it should be regulated when permitted."

Proceedings on the Admiralty side of Court.

2. The next irregularity is that the proceedings were on the admiralty instead of the common-law side of the court.

We need not remind the court that, although, under the existing organization of the federal judiciary, district courts are both courts of common law and courts of admiralty, these two courts are not only distinct, but the subject of their jurisdiction is different.

The Sarah, 8 Wheat., 391, 394.

9 Wheaton 544

Strange as it may appear, that proceedings for the confiscation of real estate should have been taken in a court of admiralty, the fact does not admit of a doubt. It is notorious that all suits in New Orleans for the confiscation of property, whether under the act of 6 August, 1861, or under that of 17 July, 1862, whatever the nature of the property, and whether the seizure was made on land or on water, were considered and conducted as admiralty proceedings. (See the cases of the Union Insurance Company, the Armstrong Foundry, the St. Louis Foundry, 6 Wall., 759 *et seq.*)

Nor was this mistake confined to Louisiana. (See United States *v.* Hart, 6 Wall., 770; Morris Collier, 8 Wall., 508.)

The error probably arose from the district attorney's considering all revenue seizures as in the admiralty court, and that the words "admiralty or *revenue* seizures" were used in the 7th section of the act of 1862 as synonymous terms, instead of being intended, as they undoubtedly were, to indicate that the proceedings should be in one or the other court, according as the seizure should be made on land or on navigable waters.

Whatever may have been the origin of the mistake, the fact that it was committed in this case is apparent on the face of the record. The proceedings commenced by a *libel* of information, not by an information; the order of arrest is termed an "admiralty warrant;" the witnesses were examined out of court; the case was tried by the judge without the intervention of a jury. Nor is this all: in Kenner's case a creditor of the accused filed what, in the practice of Louisiana, is termed a "petition of intervention." The district attorney thereupon objected to this proceeding, on the ground, 1st. That the claim was not within the provisions of the act of March 3, 1863, relating to liens on *vessels*. 2d. That he had filed the stipulation to abide by the decree, as required by No. 4 of the rules adopted in August, 1842, for the *admiralty* cases; and 3d. That petitions of intervention were not known to *admiralty* practice.

These pleadings and expressions would be absurd and unintelligible, except upon the hypothesis that the case was on the admiralty side of the court. No wonder, therefore, that the judge who tried the case considered that he was trying a cause on the admiralty side of the court. That he did so consider, we have his express and official declaration. (See his reasons for overruling motion of defendant's counsel to correct marshal's return, 71, 72, 84–86.

This case must share the fate of all those in which that mistake was made.

3. The warrant of arrest was signed by the deputy clerk. The process act, as it is termed, provides that "all writs and processes issuing from a district court, shall bear test of the judge of such court, (or if that office shall be vacant,) of the clerk thereof, which said writs and processes shall be under the seal of the court from whence they issue, and *signed by the clerk thereof.*"

Warrant of arrest not signed by the Clerk.

Act. 29 Sept., 1789, ch. 21, 1 Stat. at Large, p. 93, sec. 1.

Act 8 May, 1792, ch. 36, 1 Stat. at Large, p. 275, sec. 1.

This language is imperative. The practice in the American courts of admiralty conforms to it.

Conkling's Admiralty, vol. 2, pp. 4–130.

Benedict's Admiralty Pr., § 332.

Conkling's Treatise, 2d ed., pp. 176–199.

By an act passed 3 March, 1821, chap. 50, 3d Statutes at Large, 643, the clerk of the district court of Louisiana was authorized to appoint a deputy to *assist* him, for whose acts he should be responsible. This, we contend, did not authorize him to sign the process of the court.

In a case where the citation from a circuit court was signed by the clerk, and not by the judge, or a justice of supreme court, as required by act 1789, ch. 20, sec. 22, this court held: "The defendant is not bound to appear here unless the citation is signed in the manner prescribed by law," and dismissed the writ.

United States *v.* Hodge, 3 How., 534.

Villabolos *et al. v.* United States, 6 How., 89–90.

The same act which requires the signature of the clerk to process, requires also that the seal of the court should be affixed to it. It has been held that the latter formality is indispensable. Why is not the former equally so?

Overton *et al. v.* Clark *et al.*, 22 How., 46.

Insurance Co. *v.* Hallock, 6 How., 556.

1 Greenleaf on Evidence, § 506.

See also 5 L. R., 245; *Ibid*, 487.

18 How ~~44~~ 142.

Without a legal warrant of seizure there could be no valid seizure of the property, and without the latter the court could have no jurisdiction over it.

Dunlap's Admiralty Prac., pp. 93, ~~132, 133, 134, 135~~, 133, 136, 137.
1 Black, 529; *Ibid*, 580.
Pelham *v.* Rose, 9 Wall. 103.
Tyler *v.* Defrees, 11 Wall.
Miller's Ex. *v.* United States, 11 Wall.

Monition Defective.

4. The notice of seizure published by the marshal in this case was that which is known as the "general monition;" that is, one which is directed to no particular person, but to "all who have or pretend to have any interest in the thing seized." This was a mistake. This form is only used when the proceedings are purely *in rem;* that is, when the *res* is prosecuted for some cause, whether arising *ex contractu* or *ex delictu*, with which it is directly connected, which is, as it were, adherent to itself. As the condemnation in such cases is not founded on the act of any particular person, but of the thing itself, the thing, and not the interest of a particular person in it, is forfeited. In such cases, therefore, no particular person is cited. This form is the one generally used in revenue seizures, which are almost always purely *in rem*.

But cases occasionally occur in which the thing is seized for no act or fault of its own, but for that of its owner. Ordinary attachments for debt are of this description. As, in such cases, the owner must be known and must be mentioned in the libel—he must be specially cited.

Clarke's Praxis, ~~28, 29, 35.~~ 24. 25. 26. 27.
Dunlap's Practice, 131, 132, 135.
Betts ~~Betts~~'s Practice, pp. 28, 33.
Conkling, 147, 150.
Bouvier's Law Dict., *verbo* "Monition."

Seizures under the act of 6th August, 1861, are of the former, while those under the act of 1862 are manifestly of

the latter description. This distinction, which did not escape the attention of this court, (see McVeigh's case, 11 Wall., 266, 267,) was entirely overlooked by the district attorney and the other officers of the court below. They seemed to have imagined that because the proceedings are directed to be *in rem*, not only the rights of the party for whose offense the forfeiture is claimed, but those which anybody else might have in the property libeled, were involved in a decree of forfeiture, and therefore not necessary to cite one person more than another.

But in cases arising under this act, a special notice is not only required by the general law, but by a special act of Congress. An act, approved 18th July, 1793, provides that *in all* seizures for forfeiture by proceedings *in rem*, the name and place of residence of the owner, if known, "shall be inserted in the notice of seizure." (Chapter 8, section 28, 1 Statutes at Large, 315.)

In this case the party who, over and over again, was alleged to be the owner of the property seized, and for whose acts the forfeiture was claimed, resided in the very city where the seizure was made. Nevertheless the notice does not state that he is the owner of the property, nor is he cited to appear and defend it. This omission is the more remarkable as the marshal was directed by the judge's order to notify the "owner or owners" of the property, in addition to the general notice. (Conkling, 193–563.) Nor is this all. The act of 1862 directs that proceedings under it shall conform "as nearly as may be to those in admiralty and revenue seizures;" and the act of 1799, 1 Statutes at Large, chapter 22, 627, section 89, directs that the notice shall mention "the substance of the libel," together with the order of the court, setting forth the time and place appointed for the trial."

In the notice published by the marshal in this case, he does not even attempt to conform to the law. (33–38.) Not a word is said in it about the contents of the libel; and the order of court which was his authority to act, and

by which a day was appointed for the appearance of the owner, is entirely omitted.

According to all authorities, a notice so defective is no notice at all.

In proceedings *in rem* the "monition" or notice of seizure is the equivalent of citation, summons, or other initial process in ordinary suits *in personam.* In connection with the seizure, it brings home to the parties interested that constructive knowledge of the suit without which their rights cannot be prejudiced by it.

Conkling's Admiralty Practice, 147, 148.
Dunlap, 131, &c.
Blackwell on Tax Titles, 251, 263, 264, 265, 266.
Boswell's Lessee *v.* Otis *et al.*, 9 How., 336–350.
Hollingsworth *v.* Barbour, 4 Pet., 466.
Harris *v.* Hardeman, 14 How., 344.

See also the following decisions in Louisiana, in which these proceedings took place:

Bernard *v.* Vignaud, 1 Mart., N. S., 9.
Alcot *v.* Holmes, 8 Mart., N. S., 145.
6 Rob., 9.
10 Annual Rep., 771.

Even actual knowledge of the suit does not cure the want of a citation.

2 La. Rep., 172.
4 La. Rep., 154.
13 La. Rep., 11.
3 La. Annual Rep., 9.

"When, from certain facts, the law implies constructive notice in judicial proceedings, these must all concur in order to establish such constructive notice."

Sparks *v.* Weatherby, 16 La. Rep., 405.
18 La. Annual Rep., 481.

5. The next error we shall mention is in the form of the libal. It does not conclude "*contra formum statuti.*" This omisssion is fatal. It would be so to an indictment. Libel does not conclude "*contra formum statuti.*"

13 East, 253.
5 McD. Rep., 307.
2 Lord Raym., 1104.
Bacon's Abr., *verbo* "Indictment," H.
Lee *v.* Clarke, 2 East, 333.
16 Wall, 431.

All the authorities agree that this defect is not cured by a verdict, and that no judgment can follow.

1 Chitty's Criminal Law, 290.
1 Archbold's Criminal Practice, ~~86.~~ 105
1 Cole on Informations, 65.

It was at one time doubted whether this rule would be rigidly applied in informations on the admiralty side, but Judge Story held that it should be. 1 Gallison, 30 Ibid., 67, and the 22d of the rules in admiralty positively requires it.*

Parsons on Admiralty and Shipping, p. 385, vol. 2.

Conklings Treatise 574

All the irregularities we have mentioned thus far go to the absolute nullity of the decree of condemnation.

It is evident that if there was no seizure of the property by order of the President, or if the proceedings were brought before the wrong court, or if there was no valid warrant of seizure, and consequently no valid seizure by order of the court, in either case the court would be without jurisdiction over the property.

On the other hand, suppose the court to have acquired jurisdiction over the property, but the libel was fatally defective, or the notice to the defendant was not such as the law requires, the judgment was absolutely void.

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*NOTE.—In the Merino, reported 9 Wheat., 381, 401, the court held that the omission of this averment was not fatal; but this was in 1824, long before the adoption of the rules in admiralty, and the decision was based on the fact that it was an admiralty case.

We shall proceed to mention other irregularities which do not go to the validity of the judgment, but are grounds of error.

Vagueness and insufficiency.

6. The first of these mistakes is that on which the judgment of the circuit court was based, to wit, the vagueness and insufficiency of the libel of information. The defendant was charged with having committed one or the other of all the offenses mentioned in the act, but with no one in particular, and without specification of time, place, or circumstance. It conveyed, therefore, no information as to the nature of the offense for which the forfeiture was claimed. We can add nothing to the remarks of the circuit judge on this point. Such an information is clearly insufficient.

The Caroline, 7 Cranch, 496, 500.
Schooner Hoppet *v.* United States, 7 Cranch, 389.
The Mary Ann, 8 Wheat., 380, 390.

Case tried without a jury.

7. The next error is that the case was tried by the judge without the intervention of a jury.

Even in civil cases the right to a trial by jury is guaranteed by the Constitution and by law. (Act 1789, sec. 9.) True, in such cases the right may be waived, but the waiver will *not be presumed.*

2 Paine's R., 579, 581.

A party who is present in person or by attorney, and goes to trial before the court without objection, may fairly be presumed to have waived this right. But if he was *not* present—if, indeed, as in cases under this act, the parties could not be present without subjecting themselves to arrest, no such presumption could arise. But it is said that where no claim is presented, and a judgment by default is entered, no trial is necessary; that the facts alleged are all considered as admitted. This the court did so hold in the case of Miller's Executor *v.* United States, 11 Wall., 268.

It is with extreme reluctance that we venture to ask this court to re-examine a question which has once been formally decided by it after argument. But we think that an error of counsel, in referring the court to a law of 1789, instead of a law of 1799, has led this court into a mistake which it will gladly embrace an opportunity of correcting. We have taken the liberty, therefore, of filing a special brief on this point, to which we respectfully but earnestly ask attention.

There was no legal judgment by default.

8. If we are correct in the position that the defendant, the alleged owner of the property seized, was not properly cited or notified of the seizure, he certainly could not have been properly pronounced to be "in contumacy and default." In point of fact he was not. His name is not mentioned in the judgment. It is rendered against no one in particular, but against "all persons interested in the property seized." In other words, the judgment by default is based on the same theory as the prayer of the libel and the monition, that the proceedings were directed against the property, no matter to whom it belonged, and not merely against the rights of the party by whose alleged offenses the forfeiture was incurred. It is hardly necessary to refute a theory which seems to border on the absurd. These proceedings were directed against the property as belonging to a particular person. It was alleged to have been forfeited by his acts, and the judgment by default should have been rendered against him by name.

No findings as required by the act.

9. There was no finding by the court that the property belonged to a person "engaged in rebellion, or who had given aid or comfort thereto," as required by the 7th section of the act.

This finding would involve two distinct facts:

1st. That the defendant had engaged in rebellion.

2d. That the property libeled belonged to the defendant. The court will look in vain for any *finding* of either of these facts. The decree does incidentally state that the

property belonged to the defendant. But this is simply an assumption; for although the transcript contains all the evidence introduced, there is not a word in it relating to the ownership of the property. There was nothing, therefore, on which a finding on that point could be based.

True, the existence of a fact necessary to sustain a judgment will sometimes be implied from the judgment itself; but where the law expressly provides that a particular fact must be *found*, is it not equivalent to a declaration that its existence shall *not* be presumed? At all events, will such a presumption be raised where it is rebutted by evidence introduced by the party who invokes it?

C. M. Conrad & Son,
Attorneys for Defendant in Error.

IN ERROR TO THE

Circuit Court of the United States

FOR THE DISTRICT OF LOUISIANA.

THE UNITED STATES, Plaintiff in Error.

vs.

C. M. CONRAD, Owner of 10 Lots of Ground,
DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1873.

THE UNITED STATES, Plaintiff in Error,
vs.
C. M. CONRAD, Owner of 10 Lots of Ground,
Defendant in Error,

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Supplemental Brief for Defendant in Error.

In the case of Miller *v.* United States, 11 Wall., 268, 301, the Supreme Court held, that in seizures under the confiscation act of July 17th, 1862, where no claim is presented and a default is entered, it is a "virtual confession of all the facts necessary to a judgment," and consequently that no evidence of those facts is necessary.

Is this a correct exposition of the law? With all deference to the court, we think it is not.

The confiscation act provides that proceedings under it "shall conform as nearly as may be to those in admiralty or revenue seizures."

The question, therefore, resolves itself simply into this, What is the practice in admiralty and revenue seizures? The process act of 1789 (Stat. at Large, 1, chap. 21, sec. 2) declares that proceedings of courts of admiralty shall be "in conformity to the civil law," and the act of May 8th, 1792, (Stat. at Large, vol. 1, p. 257, chap. 36, sec. 2,) provides that they shall be according to those of

"courts of admiralty, as contradistinguished from the courts of common law;" and it has been frequently held by the Supreme Court that the courts of admiralty referred to in the last mentioned act are those of England.

10 Wheat., 439.

Courts of admiralty are governed by the modern civil law. (Clarke's Proxis, *passim;* Brown's Civil and Admiralty Law, vol. 2, pp. 347, 354; Parsons' Shipping and Admiralty Practice, vol. 2, p. 357.) There is, therefore, practically no difference between these two acts. They both, in effect, the first directly, the last indirectly, adopt the civil law as the guide in the admiralty courts. Now, we venture to affirm that the court will look in vain in the proceedings, either of the civil law or admiralty courts, for any sanction of the doctrine that a default, in proceedings *in rem*, or the failure of a party to present his claim, is an admission of the facts alleged.

In the earlier civil law courts, (for a long time adhered to by the Court of Chancery in England,) the appearance of the defendant was absolutely necessary to a final decision of the cause; and their proceedings were limited to the adoption of measures calculated to compel his appearance, to wit, the sequestration of his property. It was only after the lapse of a year that the revenues of the property were applied (and then only provisionally) to the satisfaction of plaintiff's demand.

Brown's Civil Law, vol. 2, 402, 405.

The "judgment by default," as it is now called, is comparatively a modern innovation. But this expression does not mean a judgment in favor of plaintiff without proof of his demand, but simply a judgment founded on an *ex parte trial of the cause*, after the defendant has been duly cited to appear.

Domat, whose celebrated Commentary on the Roman Law appeared about two centuries ago, expressly says, that in such cases the demand must be fully proved.

Lib. IV, Droit Public, Liv. 4, p. 573.

Pothier, who wrote a century later, is to the same effect.

Procedure Civile, § 2, p. 92, edition in 4to., 1809.

The "Code de Procedure" of France, art. 150, and the Louisiana "Code of Practice," arts. 310 to 315, prescribe the same course. In fact, in the civil law courts, the maxim "*actore non probante, reus absolvitur*" is more rigidly applied when the defendant does not appear than when he is in court. The object and effect, therefore, of a judgment by default under that system is, not to relieve the plaintiff from the necessity of proving the facts necessary to entitle him to a judgment, but simply to deprive the defendant of any right to offer evidence in his defence.

So much for the courts of civil law. The practice in the admiralty conforms to it. We have nowhere found in works on admiralty any authority for the practice, as stated by the Supreme Court in the case of Miller's executor. Clarke, who wrote in the reign of Queen Elizabeth, nowhere alludes to it. On the contrary, he speaks of the demand being proved in cases of default, as in those in which there is a *contestatio litis*.

Clark's Proxis, Tit. 24, 25, 26, 27.

Brown, who wrote in the reign of George III, says: The demand must be proved by oath, and the exhibition of the instrument evidencing the debt, *e. g.*, a bottomry bond.

Civ. and Admiralty Law, vol. 2, pp. 398, 401, 418.

We are not aware that a different practice prevails anywhere in this country.

In New York, the 56th rule of the district court declares "if the defendant do not appear on the return day, he shall be deemed to be in contumacy and default, and the libellant *may take order to compel the defendant's appearance*, according to the course of the admiralty *proceedings*, or at his option may proceed to a *hearing ex parte*." (Betts' Practice,

Rules of Court, p. 16.) This rule seems to us to be framed in strict accordance with the modern practice in civil law courts, and with that of the admiralty in England. Judge Betts tells us that the practice in his court conforms to the rule. He says that, in proceedings *in rem*, where no claimant appears, the practice is, that "after a decree of contumacy and default, the court proceeds (in cases not arising *ex delictu*) to examine the libel *and proofs*, and determine the cause." He adds: "The old notion that a party, by neglecting to appear and contest the cause, was to be deemed contumacious, as being guilty of contempt to the monitions of the court, no long enters into the principles of the practice." (Pp. 37, 38.) The practice of the prize courts, both in England and this country, on this point, corresponds substantially with that of the instance courts. When no claim is presented, we are told that the *case is heard* on the ship's papers, and the evidence taken *in preparatorio*, and if "further proof" is required, witnesses are examined, and it is only after "a full hearing" that the property is either condemned or discharged.

Brown's Civ. and Admiralty Law, vol. 2, pp. 446, 447.

Parsons' Shipping and Admiralty Practice, vol. 2, chap. 13, p. 473.

The court will remark that neither the judge nor the district attorney supposed that the default was an admission of the facts charged in the libel, and that the property could be condemned without a hearing. On the contrary, after the default was entered, a number of witnesses were examined to prove those facts. There was a hearing, and the depositions taken were offered in evidence. But by an error of the district attorney, these suits were brought and tried on the admiralty side of the court, and without a jury; the witnesses were examined out of court, and by the clerk, and their depositions were submitted to the judge, according to the practice in admiralty cases. The seizures not being on water, this, legally

speaking, was no hearing at all. The Sarah, 8 Wheat., 391.

The court refers, in support of its opinion, to Benedict's Admiralty Practice. We have examined the passage referred to, and we respectfully submit that, so far from sustaining the conclusion of the court, to us it seems strongly to militate against it. Mr Benedict first speaks of proceedings *in personam*, and says that, if the defendant when summoned fails to appear, after a decree *pro confesso* has been entered, the judge proceeds to do what? To render a decree against him, on the ground that by his failure to answer he has admitted all "the facts necessary to a condemnation?" Not at all, but "to *hear the cause ex parte*, and to decree therein as to law and to justice may appertain."

In other words, to do precisely what he would have been bound to do if the defendant had appeared and answered.

The author next adverts to proceedings *in rem*, and says, "if no claimant appears, the judge proceeds to *a final hearing*." In other words, to do precisely what is done in proceedings *in personam;* for, according to all legal lexicographers, and in equity and admiralty courts, the word "hear" is synonymous with "try," and they both imply the examination of the facts.

Mr. Benedict *was a member of the New York bar*, and a practitioner in the very court over which Judge Betts presided, and we have seen that the opinion imputed to Mr. Benedict is not only in opposition to that of Judge Betts, but to a positive rule of his court. In fact Mr. Benedict, in support of his opinion, refers to Judge Betts's work, and to the 29th rule, to which we shall presently call the attention of the court.

So much for the practice in admiralty. But supposing that we are in error on this point, and that the usual course in admiralty courts is to consider a default as a judical confession, Congress has seen fit to prescribe a different practice in revenue seizures.

On the 31st of July, 1789, Congress passed an act entitled

"An act to regulate the collection of duties imposed by law on goods and merchandise imported into the United States."
Stats. at Large, vol. 1, ch. 5, p. 29.

The 36th section of this act, (p. 47,) after directing that all vessels or other property which might become forfeited by this act, should be seized and libelled, and prescribing the forms of seizure, &c., declares that, "if no person shall appear to claim such ship or vessel, goods, wares, or merchandise, the same *shall be adjudged to be forfeited;* but if any person shall appear before such judgment of forfeiture, and claim any such vessel, ship or goods, wares or merchandise, and shall give bond to defend the prosecution thereof, and to respond the cost in case he shall not sustain his claim, the court shall proceed *to hear and determine the case according to law*," &c.

By an act approved August 4, 1790, (Stats. at Large, vol. 1, ch. 35, p. 145, sec. 74,) the above act was repealed, and this last-mentioned act was substituted in its stead, but the 36th section of the prior act was inserted in the new act as section 67.

So long as one or the other of these acts was in force, the practice of the courts, of course, conformed to this provision, and this practice probably gave rise to the "old notion," referred to by Judge Betts, that the supposed contumacy of the owner of the *res* was punished by the forfeiture of his property.

But on the 2d March, 1799, the present collection act, as it is termed, was passed. (Stats. at Large, vol. 1, ch. 22, p. 627, 696.) The 89th section of this act corresponds with the 36th section of the act of 1789, and the 67th section of the act of 1790, with this remarkable exception. Admonished, perhaps, by some case of striking hardship or injustice, of the danger of condemning without proof, and on bare presumptions, the property of parties who may never have heard of its seizure, Congress struck out the clause above quoted, which declared that if no claimant appeared the property seized "should be adjudged to be forfeited," and

in lieu thereof inserted the following: "And if *no* person shall appear and claim any such ship or vessel, goods, wares, or merchandise, and give bond to defend the prosecution thereof, and to respond the cost in case he shall not support his claim, *the court shall proceed to hear and determine the case according to law;*" thus doing away with the distinction previously made between revenue seizures in which claimants appeared and those in which they did not appear, and directing that in both cases the court should proceed "to hear and determine the cause according to law." These are the precise words employed by the previous acts in reference to cases where claims *were* presented; and unless the court shall consider that in the former acts the meaning of those words was that the property should in all cases be adjudged to be forfeited without a trial, no such meaning can be attached to them in the act of 1799, sec. 89.

The 29th Rule of the Supreme Court, in admiralty and revenue cases, is but a repetition of the above clause in the act of Congress, and was probably intended to call the attention of the bar and officers of the district courts to the fact that the practice which had formerly prevailed had been changed. Besides, by Rule 40, (Supreme Court, 1845,) the court is authorized to grant a rehearing after judgment by default. How can there be a *rehearing*, if there has been no *hearing?* The language of this rule plainly presupposes a *hearing* in cases of default. The court will observe, that neither the act of 1799 nor the rule of court makes any distinction between seizures on water and those on land, in regard to the necessity of a "hearing." It would be difficult, indeed, to find a reason for such a distinction. If a trial is proper in the one case, it must be equally so in the other. The only difference between them is, that as juries are unknown in the admiralty, and, as both under the Constitution and under the act of 1789, in seizures on land, the facts must be tried by a jury, the latter class of cases are tried on the common-law side of the court.

Both the act of 1799 and the rule of court are mentioned

by all writers on admiralty law in this country—by Dunlap, by Benedict, by Judge Betts, and by Conkling—as governing revenue seizures. The last-mentioned writer, indeed, has inserted the 89th section in full in the last edition of his work. It would seem, however, that in the case of Miller's Executors, either the attention of the court was not called to it, or that (probably by a typographical error) the court was referred to the 19th section of the act of 1789, instead of the 89th section of the collection act of 1799; for the court say, and very truly, that the 19th section of the act of 1789 contains nothing on this subject.

The case of the Schooner Lion (Sprague's Decisions, vol. 1, p. 399) is precisely in point. This vessel was libelled for the violation of a fishery act, to wit: the act of 29th July, 1813, ch. 35, (Stats. at Large, vol. 3, p. 40,) which declared that the penalties imposed for the violation of its provisions "should be recoverable under the collection act of 1799." No claim was presented, and the vessel was condemned by default, and without a hearing. On the appeal to the circuit court, this decree was reversed.

Judge Sprague says: "It is contended, by the district attorney, that condemnation, of necessity, follows upon default without a hearing; and such was the requirement of the collection act of 1790, (ch. 35, sec. 67,) as to the forfeiture therein referred to. But these prosecutions are founded on an act which expressly refers to the act of 1799 (ch. 22) for the mode of prosecution, the 89th section of which provides that, after a default, the court shall proceed to hear and determine the case according to law."

The court, therefore, (in the case of Miller's Executors,) was in error, in supposing that this decision turned on a special statute. The *seizure* was made under a special statute; but that statute, like the act under which the seizures in the cases at bar were made, directed that the proceedings for enforcing it should be governed by the general act regulating revenue seizures, to wit: the 89th section of the act of 1799.

The court has referred to Manning's Exchequer Practice, and to a case in Parker's Exchequer Reports.

In regard to the first work, we will simply say that a very cursory examination of it will suffice to show that the proceedings of the exchequer court in revenue seizures differ in many respects from those adopted in this country. This is not surprising. They spring from different sources: one from the civil the other from the common law, and often run in opposite directions. Any attempt, therefore, to blend them into one harmonious system will only be productive of confusion.

The case reported in Parker is an illustration of the truth of this remark. The proceedings therein differ from those in revenue seizures in other respects besides the condemnation of the property seized without proof, simply because no claimant appeared, for instance.

The act of 1799, and the 29th Rule of the Supreme Court, following the practice of the admiralty, require that, in revenue seizures, a libel shall be filed, setting forth the grounds of seizure. In the case referred to, no libel was filed, but the proceedings were based on a mere motion preferred *ore tenus* by the Crown lawyer.

The case in Parker was decided before the passage of the act of 1799. May we not suppose that Congress was acquainted with it, and that the act of 1799 was passed in order to put an end to a practice of which they disapproved?

Respectfully submitted.

C. M. Conrad & Son,

Of Counsel for ~~Plaintiff~~ in Error. Defendt

16 Wallace 430
Blackwell on Tax Titles, p 51
Vol 1 Statute p 315–696

Durant –
9 Cr Wheaton, p 38 5–6

~~Hilton~~

17, Vol p 197–
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SUPREME COURT OF THE U

No. 286.

SHEPHERD KNAPP, PLAINTIFF

vs.

THE [illegible] AND

IN ERROR TO THE [illegible]